120-97

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1886.**

No. 1078.

C. W. HUNTINGTON AND GEORGE RIPLEY, TRUSTEES, APPELLANTS,

*vs.*

R. W. WORTHEN, AS COLLECTOR OF PULASKI COUNTY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

**FILED OCTOBER 6, 1886.**

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1886.

## No. 1078.

C. W. HUNTINGTON AND GEORGE RIPLEY, TRUSTEES, APPELLANTS,

*vs.*

R. W. WORTHEN, AS COLLECTOR OF PULASKI COUNTY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | 1 | 1 |
| Bill of complaint | 1 | 1 |
| Exhibit A—Deed of trust from Little Rock and Fort Smith Railway to Charles W. Huntington and George Ripley, trustees, December 19, 1874 | 30 | 18 |
| B—Certified copies of schedules of return of Little Rock and Fort Smith Railway, March, 1885 | 55 | 30 |
| C—Assessment on Little Rock and Fort Smith Railway, May 11, 1885 | 60 | 34 |
| Amendments to bill | 63 | 36 |
| Plea in bar | 68 | 38 |
| Exhibit A—Transcript from Pulaski chancery court in case Little Rock and Fort Smith Railway *vs.* Worthen, collector, &c., *et al.* | 71 | 40 |
| Caption | 71 | 40 |
| Complaint | 72 | 40 |
| Exhibit A—Proceedings of Board of Railroad Commissioners, April 25, 1885 | 88 | 48 |
| Submission | 90 | 50 |
| Answer and demurrer | 91 | 50 |
| Order filing return by plaintiff for assessment, &c. | 93 | 51 |


JUDD & DETWEILER, PRINTERS, WASHINGTON.

| | Original. | Print. |
|---|---|---|
| Return by plaintiff for assessment, 1885 | 94 | 51 |
| Assessment by Railroad Commissioners | 96 | 53 |
| Decree and appeal | 99 | 54 |
| Clerk's certificate | 99 | 55 |
| Exhibit B—Transcript from supreme court of Arkansas in case Little Rock and Fort Smith Railway *vs.* Worthen, collector, &c., *et al.*, on appeal | 101 | 55 |
| Caption | 101 | 55 |
| Final decree | 101 | 55 |
| Opinion of the court | 102 | 56 |
| Decree | 115 | 62 |
| Clerk's certificate | 116 | 63 |

1 Be it remembered that on the 9th day of April, A. D. 1886, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas, C. W. Huntington and George Ripley, as trustees, &c., by their solicitor, J. M. Moore, Esq., and filed therein their bill of complaint against R. W. Worthen, as collector of Pulaski county, *et al.*, which bill of complaint is in words and figures as follows:

*The Original Bill as Amended.*

Circuit Court of the United States, Eastern District of Arkansas.

C. W. HUNTINGTON and GEORGE RIPLEY, Trustees,

*v.*

R. W. WORTHEN *et als.*

To the hon. the judges of the circuit court of the United States within and for the eastern district of Arkansas:

Charles W. Huntington, of Quincy, and George Ripley, of Andover, in the State of Massachusetts, and citizens of said State, as they are trustees under a certain mortgage or deed of trust, a copy whereof is hereto annexed, marked Exhibit A, dated December 19th, 1874, made and executed to them, as trustees, by the Little Rock and Fort Smith railway, a corporation duly existing under the laws of the State of Arkansas, bring this their bill of complaint against R. W. Worthen, as collector of Pulaski county; A. J. Witt, as collector of Faulkner county; R. H. Speer, as collector of Conway county; J. W. Quinn, as collector of Pope county; W. S. Jett, as collector of Johnson county; J. T. Tolleson, as collector of

1a Franklin county; William M. Taylor, as collector of Crawford county; John T. Williams, as collector of Sebastian county; George W. Clark, as he is the county clerk of the county of Pulaski; J. V. Mitchell, as he is the county clerk of the county of Faulkner; M. L. Asbury, as he is the county clerk of the county of Conway; James Potts, as he is the county clerk of the county of Pope; Q. B. Poyner, as he is the county clerk of the county of Johnson; A. J. Nichols, as he is the county clerk of the county of Franklin; J. Neal, as he is the county clerk of the county of Crawford, and J. H. McClure, as he is the county clerk of the county of

2 Sebastian, all of said defendants being citizens of the State of Arkansas. And thereupon the plaintiffs complain and say:

1st. That said corporation owns and operates a line of railroad extending from Argenta, a town on the Arkansas river opposite the city of Little Rock, to the city of Fort Smith, on the western boundary line of said State, and lying wholly in said State, a distance of about one hundred and sixty-five miles, and that it has so owned and operated its line of road, as far as constructed, ever since the date of the creation and organization of said corporation, on the 19th day of December, 1874.

2nd. That under and by virtue of the provisions of an act of the General Assembly of said State of Arkansas, approved March 31st,

1883, entitled "An act to revise and amend the revenue laws of Arkansas," the Governor, secretary of state, and auditor of public accounts are constituted a board of railroad commissioners for said State, and they are, as such commissioners, created a tribunal for the purpose of ascertaining the value of certain properties owned by each of the railroads or railways of each corporation or company having existence under the laws of said State, or incorporated in whole or in part therein and running through or in this State, such value to be ascertained in the manner thereafter prescribed in said act.

In and by section 45 of said act is is provided that every person, company, or corporation owning or operating a railroad in said State shall return sworn lists or schedules of the taxable property
3 of such railroads, such property to be listed and assessed with reference to its amount, kind, and value as of the 1st Monday in March of the year in which it is listed, and said lists or schedules to be made out and prepared as is thereafter provided in said act.

In and by section 46 of said act said list or schedule is required to be filed with the secrtary of state during the month of March, in the year 1883, and at the same time every second year thereafter, when required; and when such schedules shall have once been made it is provided that it shall not be necessary to report the description of the properties listed unless required so to do by said board of railway commissioners. Said section 46 further provides that said lists or schedules shall contain and include a statement showing the length of the main line and all side tracks, switches, [and] turnouts in each county in which the railroad may be so located, and in each city and town in said county through or into which the road may run; also a statement of the value of all improvements, stations, and structures, including the railroad track located on the right of way; and it is further expressly provided that "such schedule shall not include nor value embankments, tunnels, ties, trestles, or bridges;" said companies and persons are required annually, during the month of March, to report the value of all properties included in said lists or schedules under the name of "railroad track," and note all additions and changes as shall have occurred in such right of way.

In and by section 47 it is provided that such railroad as is described in said list or schedule shall be held to be real estate for the purpose of taxation, and shall be denominated "railroad
4 track," and shall be so listed and valued, and shall be described in the assessment thereof as "the railroad track of the — — railroad company, in the county, city, or town," and such description shall be considered as embracing all the property required to be assessed by said section 46, and when advertised and sold for taxes no other description shall be necessary.

In and by section 48 of said act the movable property belonging to a railroad company is held to be personal property, and denominated "rolling stock" for the purpose of taxation; and every person, company, or corporation owning, constructing, or operating a railroad in that State is required, during the month of March, annu-

ally to make and file with the secretary of state a list or schedule containing a correct detailed inventory of all the "rolling-stock" belonging to such company, together with the true valuation thereof, and distinctly setting forth the number of locomotives of all classes and cars of all classes and kinds belonging to such road, and also all locomotives and cars not belonging to such company but hired for its use for a term of not less than six months, it not being intended to tax locomotives or cars temporarily coming into or passing through said State, but only to tax such as are actually owned or leased by the companies in said State.

In and by section 49 the said board of railroad commissioners are required to meet on the first Monday in April in each year, beginning with the year 1883, at the office of the secretary of state
5 for said State, and, after being duly sworn to fearlessly, impartially, and honestly discharge their duties, to proceed to examine said lists or schedules of the description and value of the railroad track of the railroad companies filed with the secretary of state, as aforesaid, and if said schedules are made out in accordance with the provisions of said act, and in the opinion of said board the valuation of said railroad track is fair and reasonable, said board shall appraise the same; and it is made the duty of the secretary of state to certify to the assessors of each county in which said railroad is located so much of said list as values such railroad track as is located in such county, and in any city or town of such county, and such assessor shall list and assess the same as real estate by the description of "railroad track."

In and by section 50 of said act said board of railroad commissioners, for the purpose of finding the value of the "rolling-stock" of railroad companies, are required to take the total value as stated in the aforesaid list and schedule of the rolling-stock of each of the respective railroads theretofore filed in the office of said secretary of state, as aforesaid, and to divide the sum by the number of miles in the entire length of such railroad, the result thereof to be the value per mile of such railroad for the purpose of taxation, and the value per mile of any such railroad so ascertained is to be multiplied by the number of miles or fraction of miles thereof lying and being in any county, and the product thereof is the sum to be taxed in such county; and it is also made the duty of the secretary of state to certify to the assessor of the respective counties in which
6 said sums are to be taxed the amount to be taxed in their respective counties, and such assessors are required to list and assess the same as personal property under the description of "rolling-stock of railroad company.

In and by section 51 all other personal property belonging to any railroad company, except rolling-stock, is required to be listed and assessed in whatever county the same may be on the first day of March in each year, and all other real estate, including the buildings and structures thereon, other than that denominated "railroad track" belonging to any railroad company in said State is required to be listed and assessed by the assessor of the county in which such real estate is situated on said first day of March, and in the manner

as real estate belonging to individuals is required by said act to be listed and assessed.

3rd. The plaintiffs aver that the railroad of said Little Rock and Fort Smith railway is located in the counties of Pulaski, Faulkner, Conway, Pope, Johnson, Franklin, Crawford, [and] Sebastian; that said corporation, during the month of March, 1885, made out and filed with the secretary of state of said State of Arkansas a sworn list or schedule of the taxable property of said corporation, showing the length of the main line and all side tracks, switches, and turnouts in each county in which its railroad is located and in each city and town in said county through or into which its road runs; also a sworn list or schedule of the value of all improvements, stations, and structures, including the railroad track located on its right of way; but said list or schedule did not include nor value embankments, tunnels, cuts, ties, trestles, nor bridges.

7 Said corporation also filed with the said secretary of state during said month of March a list or schedule of its "rolling-stock," as required by section 48, and has in all other respects complied with the aforesaid provisions of said sections 45, 46, and 48 of said act relating to the manner of listing and valuing property of railroads. A copy of the said list or schedule of the "railroad track," as denominated in said section 47, filed by said corporation with the secretary of state is hereto annexed marked Exhibit B, and the plaintiffs pray that the same may be taken to be and made a part of this their bill of complaint.

4th. The plaintiffs further aver that said board of railroad commissioners subsequently met at the time and place prescribed by law and, after having taken [the] oath required by section 49 of said act, proceeded to examine and did examine the aforesaid lists or schedules of the description or value of the "railroad track" theretofore filed by said Little Rock and Fort Smith railway with said secretary of state, but before proceeding to ascertain the value of said "railroad track," and on or about the 24th day of April, 1885, said board of railroad commissioners made, issued, and caused to be served upon said corporation the following order or notice, to wit:

"EXECUTIVE OFFICE,
"LITTLE ROCK, *April 24th*, 1885.

"At a meeting of the board of railroad commissioners for the State of Arkansas, held at the office of the secretary of state on Thursday, April 23rd, 1885, it was resolved by said board of railroad

8 commissioners that all the property of railroad companies in this State should be assessed without regard to the restrictions and limitations in section 5649 of Mansfield's Digest, which provides that the schedules of the property of said railroad companies shall not include embankments, tunnels, cuts, ties, trestles, or bridges. The board of commissioners, after full examination and consideration, have determined that such limitations and restrictions are unconstitutional, null, and void, and they are not bound thereby.

"The several railroad companies are therefore requested to render full statements of all their property of whatever kind or description

and the true value thereof in accordance with this determination, and without regard to the restrictions and limitations aforesaid, on or before the 11th day of May, 1885, at which time a full hearing will be accorded by the board to all who desire to be heard.

"SIMON P. HUGHES, *Governor*,
"A. W. FILES, *Auditor*,
"E. B. MOORE, *Secretary of State*,
"*Board of Railroad Commissioners of Arkansas.*"

And thereupon said board of railroad commissioners procedeed to value and did value the "railroad track" of said corporation, not in accordance with the aforesaid express provisions of said act nor with the list nor with the schedule filed by said corporation with the secretary of state, but by including in such pretended valuation and in their lists and schedules the embankments, tunnels, cuts, ties, trestles, and bridges on the line of the road of said corporation, by reason whereof the valuation of and the taxes assessed and
9 levied on the "railroad track" of said defendant corporation, as defined in said act, have been nearly doubled in amount, but the plaintiffs cannot aver to what precise extent in dollars and cents, for the reason that the aforesaid pretended valuation by said commissioners is made *in solido*, and the various parts or elements included in the term "railroad track," as defined in said act, are so intermingled with the parts or elements in express terms forbidden to be included in such "railroad track," but included by said commissioners as aforesaid; that it is utterly impossible to separate or classify said pretended valuations or to form any just or true estimate of such valuation properly belonging to the "railroad track," as defined by said act, and also of the amount of such valuation property belonging to embankments, tunnels, cuts, ties, trestles, and bridges, all of which said commissioners are by the express terms of said act forbidden to include in the valuation required to be made by them. The plaintiffs annex a copy of such pretended valuation and apportionment as made by said commissioners and of the proceedings of said board relating thereto, marked Exhibit C, and pray that the same may be made a part of this their bill of complaint. The plaintiffs aver upon the best and utmost of their knowledge, information, and belief that the total valuation of said "railroad track," as defined by said act, has been raised by said commissioners from three hundred and twenty-six thousand three hundred and ninety dollars, as returned by said company, to six hundred and forty-five thousand three hundred and eighty-seven dollars, as appraised by said commissioners and certified by the secretary of state, as required by law, to the assessors of said several counties upon the line of road of said company.

10 The plaintiffs also aver that the taxes assessed and levied by said several county assessors upon the "railroad track" of said corporation in accordance with the appraisal unlawfully and arbitrarily made by said railroad commissioners and certified to said several county assessors, as required by law, are nearly double the sum, or about four thousand four hundred and sixty-six dollars

larger than they would have been had the taxes been properly assessed and levied on said "railroad track" under the lists or schedules filed by said railway company, as aforesaid, and had said railroad commissioners not arbitrarily and unlawfully included in their lists and schedules and appraisements the following, to wit: embankments, tunnels, cuts, ties, trestles, and bridges.

The plaintiffs further aver that if said railroad commissioners did not include or value embankments, tunnels, cuts, ties, trestles, and bridges on the line of said road in their aforesaid lists and schedules, then the valuations affixed by them against said "railroad track" are so excessive and beyond the valuations appraised by their predecessors in office as to be fraudulent, null, and void, and that if said railroad commissioners did include in their said lists, schedules, and appraisements, embankments, tunnels, cuts, ties, trestles, and bridges, then such appraisements and valuations are not only utterly null and void as without warrant of law, but they are also excessive in amount and illegal to the extent of four thousand four hundred and sixty-six dollars, as above set forth.

The plaintiffs also aver that the valuation of the railroad track as made by the railroad commissioners for the year 1883 are two hun-
dred and ninety-four thousand nine hundred and thirty-eight
11 dollars, and for 1884 three hundred and sixty-seven thousand
eight hundred and ninety dollars, the railroad track and the improvements thereon being very nearly the same for the year 1885.

5th. The plaintiffs further aver that the aforesaid act, approved March 31st, 1883, contains and comprises all the laws of said State which are now and which have been in force ever since the approval of said act regulating the mode of valuing all classes and descriptions of properties throughout this State for the purpose of taxation; that for and during the years 1883 and 1884 all taxes upon the properties of railroads in this State, including the properties of the aforesaid railroad corporation, have been assessed and levied and the properties themselves valued in accordance with the provisions of said act, and in no other way or manner and by no other method; that said act was passed pursuant to the power delegated to the Legislature by said State in and by section 5, article 9, of the constitution of said State, which provides as follows, to wit:

"All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value: Provided, The General Assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions, and privileges in such manner as may be deemed proper: Provided, further,
That the following shall be exempt from taxation: Public
12 property used exclusively for public purposes, churches used
as such, cemeteries used exclusively as such, school buildings and apparatus, libraries, and grounds used exclusively for school

purposes, and buildings and grounds and materials used exclusively for public charity."

The plaintiffs aver that, by virtue of said section 5, article 9, of the constitution of this State, supreme and absolute power and authority is delegated to the Legislature to prescribe the way and mode by which the various descriptions of properties throughout the State and subject to taxation shall be classified and valued and the taxes thereon shall be assessed, levied, and collected, subject only to the limitations and restrictions contained in said article 9, section 5, and also in section 6 thereof, which provides that "all laws exempting property from taxation other than as provided in this constitution shall be void;" that in and by said act of March 31st, 1883, separate and distinct methods are provided, among other things, for ascertaining the value of real estate and personal estate, and also for ascertaining the value of merchandise, of the property of manufacturers, of banks, of brokers, of stock jobbers, employed in their business respectively, of the property of express and telegraph companies, of the tangible and intangible properties of gas, telephone, bridge, street railroads, savings banks, mutual loan buildings, transportation, construction, and certain other companies or corporations incorporated under the laws of this State, and also the mode of ascertaining the value of the properties of railroads.

The plaintiffs are advised and believe and therefore aver that the constitution of the State of Arkansas does not require that taxes
13 be levied by a uniform method upon all descriptions of property; that the whole matter is left to the discretion of the legislative power, and that there is nothing to forbid the classification of property for purposes of taxation and valuation of different classes by different methods; that the rule of equality and uniformity in respect to the subject only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances, and that the different nature and uses of their property justify the discrimination between the different classes of property the discretion of the Legislature has seen fit to impose.

The plaintiffs therefore well hoped that the present board of railroad commissioners would follow, as their predecessors in office had heretofore followed, the requirements and provisions of said act of March 31st, 1883, as it was their sworn duty to do, both as executive officers of the State and also in their capacity as railroad commissioners, in the mode and manner of listing and valuing the property of the aforesaid corporation for the purposes of taxation; but now so it is that, utterly disregarding their official oaths as executive officers of the State, as well as their oaths as railroad commissioners and their duty in the premises, said railroad commissioners have not only, without any power or authority, but also, in direct violation of the plain and express provisions of said act in that behalf enacted, willfully and deliberately included in their list and schedule of property of the aforesaid corporation subject to valuation for the purposes of taxation the following, to wit: embankments,

cuts, ties, trestles, and bridges; whereas it is expressly pro-
14 vided in the 46th section of said act that "such schedule shall not include nor value embankments, tunnels, cuts, ties, trestles, or bridges," and valued the same as subject to taxation as aforesaid, and this under the pretence that the mode of valuation prescribed in and by said act is contrary to the provisions of said section 6, article 9, of the constitution of this State, and therefore utterly null and void, thus willfully disobeying the laws of the State, which they have sworn fearlessly, impartially, and honestly to execute, and arbitrarily substituting their will for that of the Legislature and arrogating to themselves judicial as well as legislative powers.

The plaintiffs are advised and believe and therefore aver that all said acts and doings on the part of said railroad commissioners constitute and are a usurpation of powers in nowise delegated to them, and an encroachment upon the powers in express terms delegated to the judicial and legislative departments of the government of the State; that railroad property in this State can be valued for the purposes of taxation and taxes thereon assessed, levied, and collected only by virtue of a statute in that behalf enacted; that by reason of the aforesaid illegal and despotic acts of said railroad commissioners the aforesaid pretended valuations and assessments attempted to be made by said commissioners of the "railroad track" of the plaintiff railroad corporation, as it is defined in said act, is utterly null and void, as being wholly not only without warrant of law, but in violation of the express provisions of law in that behalf enacted, and that the collection of all taxes levied under such
illegal and arbitrary valuation and assessment ought in law,
15 equity, and good conscience to be restrained and enjoined; that it is a well-settled maxim of law that every act of the Legislature duly enacted is presumed to be a constitutional enactment until it is otherwise adjudged by the judicial department of the government, and no such adjudication had been made in regard to the aforesaid act of March 31st, 1883, or any of its parts or provisions, when said pretended valuation had been made; that it is wholly immaterial in this case whether the aforesaid provisions of said act, which said railroad commissioners not only ignored, but deliberately and wilfully refused to obey, is or is not a constitutional enactment, inasmuch as said commisioners are not authorized by the General Assembly to value the "railroad track" of said corporation in any other way or manner than that prescribed [in] said act; that, by reason of said unlawful and arbitrary acts and doings of said railroad commissioners in connection with the listing and valuation of the "railroad track" of the plaintiff corporation as the same is defined in said act, the taxes levied thereon, and which are now sought to be collected by the collectors of said several counties, have been levied without due process of law and in direct violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," in-

asmuch as it is a direct contradiction in terms and the height of absurdity to maintain that taxes assessed in violation of express provisions of laws are assessed by due process of law, and inasmuch as taxes can be levied only by virtue of express provisions of law.

16 6th. The plaintiffs further aver that while, for the reasons hereinbefore particularly set forth, they are advised that it is wholly immaterial whether the aforesaid provisions of said act of March 31st, 1883, are constitutional or not, in order to entitle them to the relief herein sought, inasmuch as said taxes have not been assessed and levied upon its "railroad tracks," as defined in said act, pursuant to any law of said State, but wholly and solely by the arbitrary will and pleasure of said railroad commissioners, and without regard to the rights of the aforesaid corporation, the plaintiffs are advised and believe, and so aver, that the aforesaid provisions of said act which said railroad commissioners wilfully ignored and deliberately violated are in all respects valid and binding enactments and within the competency of the Legislature; that by the provisions of said section 5, article 9, of the constitution of this State express power is delegated to the Legislature to prescribe the manner and mode by which the value of railroad property shall be ascertained for the purposes of taxation, to wit:

"In such manner as the General Assembly shall direct, making the same equal and uniform throughout the State;" that under and by virtue of the power thus expressly conferred upon the Legislature it is their sole duty and province to prescribe the mode of valuing railroad property for the purposes of taxation, and in their discretion to provide whether all the various and diverse elements or parts which, when combined, constitute a railroad shall be taken into account, or whether certain of said elements or parts ought in equity and justice to be excluded in estimating the value and earn-

17 ing capacity of such railroad, and that so long as the same method of valuing such "railroad track," as defined in said act, applies equally and uniformly to all railroads within the State, and no discrimination exists in favor of or against any railroad within the State, the provisions in said section 5 relating to equality and uniformity are satisfied with; that a "railroad track" is a peculiar species of property, in which there is no absolute right of ownership or of property, being, as is declared by the constitution of this State, a "public highway;" that the business of a railroad company being solely that of a common carrier the value of its track does not by any means depend simply upon the cost of its track, but upon its capacity to make net earnings over and above the cost of maintenance of way and equipments and the operating expenses thereof; that certain elements which enter into the construction of a railroad, such as embankments, tunnels, cuts, ties, trestles, and bridges, not only increase the original cost of such road, but also, from their perishable nature, increase the cost of maintaining the track in safe repair, and to that extent diminish its capacity for making net earnings and the value of its business as a common carrier; that the question what elements shall be included and what elements excluded in as-

certaining the value of a "railroad tract," as defined in said act, for the purposes of taxation is not a judicial question, but one which, by section 5, article 9 of the constitution of said State is to be ascertained solely by the Legislature from time to time in the exercise of its discretion, and which, when expressed and declared in the form of a statute law, must stand as the law of the State until altered, amended, or
18 repealed; that when the Legislature has prescribed that certain elements shall be excluded in ascertaining the true value of a "railroad track" as defined in said act, all the officers of the State, judicial as well as executive, are in law bound to treat such expressions of the legislative will, not as an attempt illegally to exempt property from taxation, but simply as a legitimate and lawful exercise of the discretion imposed upon them by the constitution of the State relating to the just and proper method of ascertaining the value of the railroad track of railroad corporations for the purposes of taxation, and it is to be presumed by all the officers of the State, judicial as well as executive, that the Legislature has in good faith simply exercised the powers in express terms delegated to it by the constitution of the State, and has observed the limitations therein provided.

If the executive and judicial officers of the State can nullify the exercise of the legislative discretion in this case where it has been in express terms imposed upon them by the constitution of the State, they can also nullify the exercise of such legislative discretion in all cases, and the only resource left for the maintenance of the constitutional government in this State is by recourse to the courts of the United States.

7th. The plaintiffs further aver that prior to the passage of the aforesaid act of March 31st, 1883, the mode of ascertaining the value of the railroad tracks of railway corporations for the purposes of taxation was based upon the net receipts of such corporations from its business as a common carrier during the preceding year,
19 as was provided in Gantt's Digest, sec. 5098 to 5103, both included, and as amended by the act approved March 8th, 1879.

The plaintiffs are advised and believe, and so aver, that if the aforesaid method of ascertaining the value of "railroad tracks" as provided for in the aforesaid act of March 31st, 1883, shall he held to be unconstitutional, null, and void, then the only mode by which the value of railroad tracks for the purposes of taxation can be ascertained is under the aforesaid sections of Gantt's Digest and said act of 1879, inasmuch as the mode of valuation provided for in said act of 1883 must, so far as relates to "railroad tracks," be defined in said act, be taken as a unit incapable of division and separation, and if any part thereof is declared unconstitutional, null, and void, all its parts and provisions must also be so declared, and inasmuch as it is beyond the power of the judiciary to legislate and to declare that a mode of valuation directly contrary to the express terms of the statute, and to the one attempted to be provided for by the Legislature can be substituted in its place.

8th. The plaintiffs further represent that said corporation has

paid the taxes assessed and levied upon its "rolling-stock" and all other properties not included in the term "railroad track," and aver that it would willingly pay the taxes upon all its properties denominated in said act of March 31st, 1883, as "railroad track," had lawful valuation and assessment been made thereof or any lawful demand been made thereto, but no such lawful valuation, assessment, and demand has as yet been made for the reasons hereinbefore set forth.

20 The plaintiffs further aver that they would willingly tender to the several collectors of said several counties the amounts respectively and lawfully due from said corporation as taxes upon its "railroad track" for the year 1885, and, upon their refusal to receive the same in full payment of all such taxes due thereon, bring the same into this honorable court, if any means existed by which the plaintiffs could ascertain the amounts severally and lawfully due said several collectors, but that under the provisions of section 49 of said act the secretary of state has certified to the assessor of each county in which the plaintiffs' railroad is situated so much of said list and schedule assessed by said railroad ccommissioners as contains the valuation of so much of such "railroad track" as defined in said act and as is located in such county and in any city or town of such county as it is his duty to do, and the assessors of said several counties have listed and assessed the same as real estate; and that for the reason that said railroad commissioners have so included and intermingled in their lists and schedules so transmitted to the assessors of each [of] said counties and have valued the embankments, cuts, ties, trestles, and bridges on the line of said road, all of which the 46th section of said act expressly provided should not be included, as is hereinbefore averred, it is utterly impossible, as is hereinbefore averred, for the plaintiffs to separate the lawful from the unlawful valuations and assessments and to ascertain the amounts lawfully due the collectors of each of said counties; but when the amounts lawfully due said several defendant collectors shall have been ascertained the plaintiffs offer hereby and herein to pay such

21 amounts to said several defendant collectors within such time as may be prescribed by this honorable court.

9th. The plaintiffs further aver that the aforesaid several county assessors have delivered to the several county clerks of said counties the list or schedules of valuations and assessments so ascertained as aforesaid and certified by the secretary of state for said several counties, and several county clerks have extended on the tax-books of said several counties against said property so assessed the several amounts claimed to be due to said several defendant collectors from said corporation. The plaintiffs aver that the several tax-books for each of said counties have been delivered to the said several respective defendant collectors for each of said counties, including the taxes based on the aforesaid illegal and arbitrary assessment on the part of said railroad commissioners, but the said corporation has refused to pay the same for the reasons hereinbefore fully set forth, and several collectors have returned the same to the county clerks of their respective counties as delinquent. Said several county

clerks have caused said "railroad track" to be published in the list of delinquent lands in their respective counties, with a notice that said "railroad track" will be sold on the 2nd Monday of April next, or so much thereof as may be necessary to pay the taxes, penalties, and cost due thereon. And the plaintiffs aver that unless restrained by the order and decree of this hon. court said several county collectors will proceed to sell each so much and such part of said "railroad track" as is situated in his several counties, in pursuance with the notices published as aforesaid.

21*a* 10th. The plaintiffs aver that said corporation has heretofore, and before the taxes assessed upon said "railroad track" as defined in said list become delinquent, to wit, on the — day of December, 1885, instituted proceedings in the Pulaski chancery court to restrain and enjoin the collectors of said several counties from returning said taxes as delinquent and from further proceedings in the collection of the same, upon the proof and for the reasons hereinbefore specially set forth; that said chancellor upon the application of said corporation issued a restraining order, but upon final hearing of said suit said restraining order was dissolved, the application for an injunction denied, and the bill of complaint dismissed for the reason that said taxes upon said "railroad track" had been lawfully assessed; that said corporation immediately thereafter appealed from the aforesaid order and decree of said Pulaski chancery court to the supreme court of said State of Arkansas. The last-named court had recently, to wit, on the 27th day of March, 1886, rendered its decision and affirmed the decree of said chancery court.

The plaintiffs further aver that said Little Rock and Fort Smith railway has appealed from said decision and judgment of said supreme court of said State to the Supreme Court of the United States, and to that end has sued out a writ of error returnable to the next term of said Supreme Court of the United States, to wit, at the October term, 1886, of said last-named court, but the plaintiffs aver that said suit cannot be reached on the docket of said court and be argued or decided before the wrongs and injuries hereinafter complained of will have been perpetrated, unless the defendants be restrained and enjoined as hereinafter prayed.

22 The plaintiffs are advised and believe and so aver that said suit is in nowise a bar to this suit, nor the decision therein binding upon this honorable court, but that they are entitled of right to the judgment and decree of this honorable court in relation to the matters and things herein set forth, inasmuch as the plaintiffs are by the judgment and decree of said supreme court deprived of a remedy essential to a vindication of the rights derived from and protected by Article 14 of the amendments to the Constitution of the United States, as is hereinbefore specially alleged.

23 11th. The plaintiffs further aver that the "railroad track" and right of way of said Little Rock and Fort Smith railway is a strip of land one hundred feet in width, with its road-bed and all improvements thereon, and extending throughout the entire length of its line of road, a distance of about one hundred and seventy miles, and running in and through the several eight counties above

mentioned; that said "railroad track" is continuous, indivisible, and incapable of separation, and each and every part thereof is necessary and essential to the operation of its road, and in order to enable said corporation to exercise its franchise and to perform its duties to the public as a common carrier of passengers and freight, and to the Government as a carrier of the United States mails, that by the provisions of said act of March 31st, 1883, the above-named county collector can sell so much and such parts of said "railroad track" as is situated in his said county, and that if said eight county collectors shall proceed to sell so much and such parts of said "railroad track" as is situated within their respective counties, there may be eight distinct and independent purchasers, neither of whom can in any way own or use any other part of said "railroad track" than that which is situated within the limits of said respective counties; that said railroad corporation, having paid the taxes assessed upon the "railroad stock," as defined in said act, and having also paid all other taxes assessed upon its remaining personal property and real estate rather than its said railroad track, as is hereinbefore alleged, a multiplicity of suits must necessarily arise between such purchasers and the plaintiffs should the purchaser, or any of the purchasers, at any of said sales for delinquent
24 taxes assessed on the "railroad track" of said corporation attempt to exercise any of the functions of a common carrier or to use said railroad track in any way or manner whatsoever, or should said purchaser or any of said purchasers attempt or undertake to prevent said corporation from exercising its franchise and conducting its business as a common carrier.

The plaintiffs also aver that under the laws of said State of Arkansas the taxes assessed upon real estate, including the "railroad track" of said corporation, are a lien thereon, and unless said threatened sales of said "railroad track" by said several county collectors are restrained by this hon. court a cloud will be created upon the title of said corporation and of said plaintiffs to its "railroad track" in each of said counties and throughout the entire length of the line of its road.

All of which matters and things herein set forth will cause an irreparable damage to said corporation, its business, and its property.

The plaintiffs further aver that under the laws of said State of Arkansas no adequate provision is made nor does any adequate remedy exist for the recovery of taxes paid, even though the same are illegally assessed, levied, and collected.

That the collector of each county is required to attend at the court-house, in his county, on the 2nd Monday in April of each year, and then and there within certain prescribed hours to proceed to offer for sale each tract of land, city or town lot, for the taxes, penalty, and costs thereon, and the person offering at such sale the amount of taxes, penalty, and costs due on the whole tract
24*a* or lot for the smallest subdivision thereof shall be the purchaser thereof; and if no person shall offer or bid the amount of taxes, penalty, and costs due on said tract, lot, or parcel thereof, then said collector is required to bid the same off in the name of the

State of Arkansas, bidding therefor the amount of taxes, penalty, and costs thereen, and said collector is also required to continue said sales from day to day until each tract of land, city, or town lot or part thereof shall be sold. The clerk of said county court is also required to attend at such sales of delinquent lands by said collector of said county, and to make record thereof describing the several tracts of land, stating the part thereof sold, and the amount of taxes, penalty, and costs due thereon, and to whom sold, and also to record in a separate book each tract of land, town, or city lot sold to the State, together with the taxes, penalty, and costs due thereon. Said county clerk is also required immediately after such sale to make out and certify to the auditor of State a copy of each of said bids as recorded in said book, together with an abstract thereof showing the total valuation of the property contained in each, and the total amount of taxes, penalty, and costs thereon in each.

Said collector is also required to make out and deliver to the purchaser of any land sold as aforesaid a certificate of purchase, describing the land sold, which certificate is assignable in law, and an assignment thereof vests in the assignee and his legal representatives all the right, title, and estate of the original purchaser.

24*b* The clerk of the county court is also required immediately after the sale to transfer upon the tax books all lands sold for taxes to the name of the purchaser. All lands sold for taxes may be redeemed in the manner prescribed in said act at any time within two years from the date of sale, and if the same shall remain unredeemed the county clerk of each county is required, on the production of the certificate of purchase, to execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the tract or lot described in each certificate, such deed to be in the form and to have the force and effect set forth in said act. Said county clerk is also required, immediately after the expiration of said two years, to make out a certificate of sale to the State for all lands bought, as shown by the aforesaid records in his office, which have not been redeemed, and state therein the amount of the taxes, penalty, and costs thereon, and cause the same to be recorded in the recorder's office of the county, "and thereupon," under the provisions and in the words of said act, the title to all lands embraced in such certificate shall vest in the State, and the clerk shall immediately transmit such certificate to the commissioner of State lands, and thereupon the said lands shall be subject to disposal as other forfeited lands shall be.

12th. The plaintiffs further aver that while, for the reasons hereinbefore specifically set forth in paragraph 4 of this their bill of complaint, they are unable to estimate with entire accuracy the several amounts which said corporation in law and equity ought to pay to said several defendant collectors as taxes lawfully

25 assessed for the year 1885 upon the "railroad track" of said corporation, as the same is defined in said act, still, according to the best and utmost of their knowledge, information, and belief, said corporation ought in law and equity to pay the follow-

ing amounts, and no larger sums to said several defendant collectors—that is to say:

| | |
|---|---|
| To R. W. Worthen, as collector of Pulaski Co., the sum of | $447 19 |
| To A. J. Witt, as collector of Faulkner Co., the sum of | 551 58 |
| R. H. Speer, as collector of Conway Co., the sum of | 613 05 |
| To J. W. Quinn, as collector of Pope Co., the sum of | 762 86 |
| To W. S. Jett, as collector of Johnson Co., the sum of | 870 58 |
| To J. T. Tolleson, as collector of Franklin county, the sum of | 674 80 |
| To Wm. L. Taylor, as collector of Crawford Co., the sum of | 504 23 |
| To John F. Williams, as collector of Sebastian Co., the sum of | 144 52 |
| Total | $4,568 82 |

And the plaintiffs bring into this hon. court, with this their bill of complaint, the aforesaid sum of $4,568.82, the same to be apportioned and paid to said several defendant collectors in the manner and to the respective amounts above specified, the same to be in full payment and discharge of all taxes lawfully due and payable upon the "railroad track" of said corporation as defined in said act for the year 1885, unless, upon an accounting to be had in this hon. court, a larger sum shall be found to be due from said corporation as taxes upon its said "railroad track" as the same is defined in said act for the year 1885, in which case the said plaintiffs hereby offer to pay such additional amount into this hon. court for the purposes aforesaid or to said several defendant collectors within such time and in such manner as this hon. court may order and decree.

26 And the plaintiffs further say that the above payments into this court are made upon the express condition that said act of March 31st, 1883, and all its parts and provisions, so far as the same relate to the mode of ascertaining the value of railroad properties and of assessing the same, and more particularly sections 45, 46, 47, and 49 of said act, are finally held and adjudged to be constitutional enactments and as within the power of the Legislature of the said State, and also upon the further express condition that the valuation and appraisal of the said "railroad track" as defined in said act and for the year 1885, as made by said railroad commissioners, are finally held to be without warrant of law and utterly null and void. But if the provisions of said act of March 31st, 1883, so far as the same relate to the mode of ascertaining the value of the "railroad track" of said corporation as the same is defined in said act, and particularly in sections 45, 46, and 47 thereof, are held to be unconstitutional, null, and void, then the plaintiffs hereby and herein pay into this hon. court only so much and such parts of said gross sum of $4,568.82 as may suffice to pay and discharge the balance of the taxes which would be due and payable if levied and assessed under said sections 5098 to 5103, as amended by the aforesaid act of March 9th, 1879, after deducting from gross sum so as-

certained to be payable the gross amounts heretofore paid by said corporation to said several defendant collectors as taxes upon the rolling-stock of said corporation as defined in said act, such balance to be apportioned among said several county assessors in a manner prescribed by said act of March 9th, 1879, and sections 5098
27 to 5103 of Gantt's Digest of the Laws of the State of Arkansas, and the plaintiffs pray that after said taxes so assessed and levied shall have been paid out of said moneys so in court the amount of money remaining in the custody of this hon. court may be decreed to belong and be paid to the plaintiffs.

In consideration whereof, and forasmuch as the plaintiffs are entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said defendants may, if they can, show why the plaintiffs should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, information, and belief, the corporal oaths of said several defendants being hereby waived, full, true, direct, and perfect answers make to all and singular the premises as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that said defendant collectors, and each and all of them, as county collectors of their several respective counties, may be restrained and enjoined, both during the pending of this suit and perpetually, by the order and decree of this hon. court, from selling or offering for sale the "railroad track" of said Little Rock and Fort Smith railway, as the same is defined in the aforesid act of March 31st, 1883, or any part thereof, lying, being, or situated in their said several respective counties for the non-payment of the taxes assessed upon said "railroad track" based upon or in accordance with the valuation made by the board of railroad commissioners of said State of Arkansas in the year 1885;
27*a* or if said several county collectors, or any of them, shall have sold so much and such part of said "railroad track" as is situated in their several counties before the writs of injunction herein prayed for shall have issued out of this hon. court and been served upon said several county collectors, that then and in such case said several county collectors and their deputies, agents, and servants may be restrained and enjoined, both during the pending of this suit and perpetually, from making out and delivering to the purchaser or purchasers of any part of the "railroad track" of said corporation as the same is defined in said act a certificate or certificates of such purchase or purchases; and that said several county clerks, their deputies, agents, and servants, may also be restrained and enjoined from transferring upon the tax-books of their said several and respective counties any part of the aforesaid "railroad track" of said corporation that may be situated in his said county and that has been sold, or attempted or pretended to have been sold, by said every and respective collector to any purchaser or purchasers or from making any entries whatever in said book relating to such pretended purchase; and that said several county clerks may also

be restrained and enjoined, both during the pending of this suit and perpetually, from making out and certifying to the auditor of said State a copy or copies of each and every and all of such lists and parts of said "railroad track" as defined in said act as may have been sold, or pretended to have been sold, to said State, and also from executing or delivering to any purchaser or purchasers of said "railroad track" a deed of conveyance of said "railroad track" or any part thereof, and also from making out a certificate or certificates of sale to said State for any part of said "railroad track," and from recording such certificate or certificates in the recorder's office of their said several and respective counties, and from transmitting, or attempting in any way to transmit, such certificate to the commissioner of State lands of said State; and that in case
28 this court shall hold that the provisions of said act of March 31st, 1883, so far as relates to the valuation and assessment of the railroad track, as defined in said act of said corporation for the year 1885, are unconstitutional, null, and void, then and in such case this court will order and decree that an account be taken of the net earnings of said corporation for the year 1884, in accordance with the provisions of sections 5098 to 5103, both inclusive, of Gantt's Digest of the Laws of said State of Arkansas, as amended by said act of March 9th, 1879, and that said plaintiffs be ordered to pay out of the funds paid into this hon. court, as aforesaid, to said several county collectors the amounts found to be severally due and payable to them under such valuation and assessment and accounting, and that the balance of said funds and moneys may be paid over to the plaintiffs, and that plaintiffs may have such further and other relief in the premises as the nature of the case may require and to your honors shall seem meet.

May it please your honors to grant to the plaintiffs not only the writs of injunction issuing out of and under the seal of this honorable court to be directed to said several defendant county collectors and county clerks to restrain them and each and every of them, as herein prayed, but also the most gracious writs of subpœna of the United States of America to be directed to the said defendants, thereby commanding them and every of them at a certain day and under a certain penalty therein to be specified personally to be and to appear before your honors in this honorable court, and then
29 and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet and to justice and equity may appertain.

C. W. HUNTINGTON,
*For Himself, and*
GEO. RIPLEY, *Trustee.*

J. M. MOORE,
*Counsel for Trustee.*

Subscribed and sworn to before me this 9th day of April, A. D. 1886.

RALPH L. GOODRICH, *Clerk,*
By W. P. FIELD, *D. C.*

30 *Exhibit A to Bill.*

This indenture, made the nineteenth day of December, A. D. 1874, between the Little Rock and Fort Smith railway, a corporation existing under the laws of the State of Arkansas, party of the first part, and Charles W. Huntington and George Ripley, both of Boston, in the State of Massachusetts, trustees, parties of the second part.

Whereas, under and by virtue of an act of the Congress of the United States of America, approved July 28th, 1866, entitled "An act to revive and extend the provisions of 'An act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi, opposite the mouth of the Ohio river, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi river,' approved February 9, 1853, and for other purposes," the said Congress of the United States granted to the said State of Arkansas, for the purpose of aiding in the construction of the railroad of the Little Rock and Fort Smith Railroad Company, from the city of Little Rock to the city of Fort Smith, near the western boundary line of said State, every alternate section of public land of the United States, not mineral, to the amount of ten alternate sections per mile for each mile of said railroad; and further, the said company, in addition to land so granted, was authorized to locate the said railroad on any public lands of the United States not otherwise appropriated, reserved, or disposed of, and the right of way over said lands of the United States for the purposes aforesaid, was thereby granted to said company to the width of one hundred feet on each side of said road as located.

31 And whereas, under and by virtue of an act of the General Assembly of said State of Arkansas, approved April 12, 1869, entitled "An act supplemental to an act to incorporate the Little Rock and Fort Smith Railroad Company, approved January 22, 1855, and an act entitled 'An act fixing the line of the Little Rock and Fort Smith branch of the Cairo and Fulton railroad,' and granting the lands donated by Congress to the State in aid thereof, approved January 19, 1855," all the rights of way, benefits, privileges, lands, and property granted to said State of Arkansas, by virtue of said act of Congress, and any acts amendatory thereof, for the purpose of aiding in the construction of said Little Rock and Fort Smith railroad, were by said General Assembly granted, vested in, and transferred to said Little Rock and Fort Smith Railroad Company.

And whereas the Congress of the United States, by an act approved April 10, 1869, entitled "An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road," and also by an act approved March 8, 1870, entitled "An act to amend an act entitled 'An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road,' ap-

proved April 10, 1869," fixed and established the time for building the first section of twenty miles of said railroad for the term of three years from the 13th day of May, 1867, with the terms and conditions of all which aforesaid acts said company has thus far fully complied.

32 And whereas the said Little Rock and Fort Smith Railroad Company did heretofore execute two distinct and independent mortgages or deeds of trust, viz., one mortgage to Henry W. Paine and Samuel T. Dana, trustees, dated December 22nd, A. D. 1869, upon its railroad, equipments, franchises, and property in said mortgage described, to secure the gold bonds of said company to be issued thereunder to an amount in the aggregate of three million five hundred thousand dollars, and another mortgage to Henry W. Paine, Samuel T. Dana and William B. Stevens, trustees, dated June 20th, A. D. 1870, upon the lands granted by the acts of Congress and the State of Arkansas, hereinbefore recited, to secure the bonds of said company to be issued thereunder to the amount in the aggregate of five millions of dollars, payable in lawful money of the United States, both of which said mortgages have been foreclosed, and the said land grant, railroad, franchises, and property described and conveyed in and by each of said mortgages have been sold on the 10th day of December instant, under and by virtue of decrees of the circuit court of the United States for the eastern district of Arkansas, and the purchasers thereof have become and organized a corporation under the act of the General Assembly of the State of Arkansas, approved December 9, 1874, entitled "An act supplemental to an act entitled 'An act to provide for a general system of railroad incorporation, approved July 23, 1868,'" and have adopted the corporate name of "The Little Rock and Fort Smith railway," and the said The Little Rock and Fort Smith Railway have acquired and become vested with all the corporate rights, liberties, privileges,

33 immunities, powers, and franchises of and concerning the said The Little Rock and Fort Smith Railroad Company, together with the lands heretofore granted to said company under and by virtue of the aforesaid acts of Congress and of the General Assembly of the State of Arkansas, and the right to acquire additional lands under the aforesaid acts.

And whereas the said Little Rock and Fort Smith Railway, in order to provide means for the completion and equipment of its said railroad, and for other purposes, has resolved to issue and negotiate a series of bonds, amounting in the aggregate to three million dollars, payable in lawful money of the United States, at the end of thirty years from the date thereof, with interest coupons payable also in lawful money semi-annually, at the rate of seven per centum per annum, free from United States tax, which said bonds are to be all equally secured by these presents, and are to [be] issued in denominations of $1,000 each, numbered consecutively from 1 to 2,000, inclusive, and also in denominations of $500 each, numbered consecutively from 2,001 to 4,000, inclusive, and are to be in form and substance as follows, viz.:

UNITED STATES OF AMERICA, *State of Arkansas:*

The Little Rock and Fort Smith Railway.

No. —. $1,000.

*First-Mortgage Railroad and Sinking-Fund Land-Grant Bond.*

The Little Rock and Fort Smith Railway, a corporation existing under the laws of the State of Arkansas, acknowledges itself to owe to the bearer hereof one thousand dollars, lawful money
34 of the United States of America, which sum the said company promises to pay to the bearer hereof, on the 1st day of January, in the year 1905, at the office of the company in Boston, Massachusetts, with interest thereon at the rate of seven per centum per annum, payable semi-annually in lawful money of the United States, free from any United States Government tax, at said office, as specified in the coupons hereto annexed, as they severally become payable; and in case of any non-payment of any installment of interests which shall have become payable and shall have been demanded, and the continuance of such default for the period of six months after any such demand, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust or mortgage hereinafter mentioned. This bond is one of a series of bonds amounting in the aggregate to three millions of dollars, the payment of each and all of which is equally secured by a first mortgage or deed of trust, bearing date the 19th day of December, 1874, executed and delivered by the said railroad company to Charles W. Huntington and George Ripley, both of Boston, Massachusetts, conveying all the right, title, and interest which the said railway now has or shall hereafter acquire in and to all the lands of the United States acquired by said company under an act of Congress, approved July 28, 1866, and the several acts amendatory thereof, and by an act of the General Assembly of the State of Arkansas, approved April 12, 1869, and by deed or grant, amounting in the aggregate to one million acres, more or less; and also conveying the said railroad of the said company and its equipments, appurtenances, franchises, and property in said deed of trust or mortgage mentioned or described.
35 The bond is secured and redeemable by a sinking fund in the manner provided and declared in said deed of trust, and shall be received at its par value in payment for any of the lands which may be sold or conveyed under the provisions of said mortgage or deed of trust. This bond shall not become obligatory until it shall have been authenticated by a certificate indorsed hereon, signed by the trustees named above or their successors as such trustees.

In witness whereof the said The Little Rock and Fort Smith railway has caused its corporate seal to be hereto affixed, and the same to be attested by the signature of its president and treasurer, and has also caused the coupons hereto annexed to be signed by its treasurer, this 1st day of January, in the year 1874.

——— ———,
*President.*

——— ———,
*Treasurer.*

*Trustees' Certificate.*

We certify that this bond is one of the series of bonds described in and secured by the first-mortgage deed within mentioned.

——— ———,
——— ———,
*Trustees.*

36 Now, therefore, this indenture witnesseth that, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party of the second part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof, and of the coupons thereto annexed, the said party of the first part hereto has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer, unto the said parties of the second part, as joint tenants and not as tenants in common, and the survivor of them, and his and their successors and assigns, all the right, title, interest, claim, or demand whatever which the party of the first part now has, or which it shall or may at any time hereafter acquire or become entitled to, of, in, or to all those lands or sections of lands so as aforesaid granted in and by said acts of the Congress of the United States of America, and in and by said act of the General Assembly of the State of Arkansas, and each and every of them, for the purpose of aiding in the construction of the railroad of the party of the first part, as aforesaid, being ten sections, or six thousand four hundred acres for each mile, amounting, in the aggregate, to nine hundred and seventy-nine thousand two hundred acres of land, be the same more or less, and situated in said State of Arkansas adjoining and adjacent to the line of railroad of the said party of the first part, as hereinbefore described and in said act of Congress provided, full lists of which said lands will be appended to this instrument as said lands are surveyed, selected, and certified, which said lists are to be signed by the president of said company and are to be taken
37 and considered as part and parcel of this deed without reference to the dates of said lists; also all the right, title, interest, claim, or demand whatsoever which the said party of the first part now has, or which it shall or may at any time hereafter acquire or become entitled to, of, in, or to any and all such other lands as heretofore have been or hereafter may be granted or conveyed to said company in payment for subscriptions to its capital stock, or otherwise; also all and singular the railroad of the party of the first part, or which the said party of the first part is by law authorized to construct, being the line of railroad heretofore known as the Little Rock and Fort Smith railroad, as the same is and hereafter shall be constructed from the city of Little Rock, in the county of Pulaski and State of Arkansas, to the city of Fort Smith, in the county of Sebastian and State aforesaid, near the western boundary-line of said State of Arkansas, including all the railways, ways, right of way, all tracks, bridges, viaducts, culverts, fences, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, water stations, machine-shops, and all other buildings and structures, with the

lands appurtenant to the same, and all locomotives, tenders, cars, and other rolling-stock or equipment, and all machinery, tools, implements, fuel, materials, and all other personal property of every nature, kind, and description whatsoever now held or acquired, or hereafter to be held or acquired, by the said company, its successors or assigns, for use in connection with the railroad of the party of the first, or with any part thereof, or with the business of the
38 same; and also all franchises connected with or relating to to the said railroad, or to the construction, maintenance, or use of the said railroad, and all the franchises, rights, and things, of whatsoever name or nature, now held or hereafter to be acquired by the said party of the first part, or its successor, together with all and singular the endowments, income, and advantages, tenements, hereditaments, and appurtenances to the above-mentioned lands, railroad, or property belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, present or prospective, of the said party of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances, subject, nevertheless, to the provisions of the act of Congress of the United States as aforesaid:

To have and to hold the above-described premises, property, lands, and appurtenances unto the said parties of the second part, as joint tenants and not as tenants in common, and to the survivor of them, and his and their successors and assigns, to the only proper use, benefit, and behoof of the said parties of the second part, and the survivor of them, and his and their successors and assigns, in trust nevertheless, for the uses and purposes herein expressed, to wit:

Article first. Until default shall be made by the said party
39 of the first part, its successors or assigns, in the payment of the principal or interest, or some part thereof, of the said bonds, or of some one of them, or until default shall be made in the performance or observance of any other covenant of the party of the first part herein contained, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, use, and enjoy, the aforesaid lands and property, and the said railway, with its equipments and appurtenances, and to take and use the rents, incomes, profits, issues, and tolls thereof, in the same manner and with the same effect as if this mortgage had not been made, except as hereinafter provided.

Article second. All moneys arising from the sales of the said lands, after deducting the expenses of executing this trust, are hereby pledged to the payment of the said bonds and of the interest coupons or warrants thereto attached; and all such moneys shall be applied by the trustees from time to time, as they shall receive the same, first, to the payment of the coupons or interest warrants attached to said bonds as fast as the same shall become due and payable, to the extent that the net earnings from the business of the road shall be insufficient for that purpose; secondly, in purchasing and cancelling such outstanding bonds as can be obtained at their

market value, not exceeding, however, a premium of ten per cent.; and, thirdly, to the payment of such of the bonds themselves as shall not have been purchased in accordance with the foregoing provisions, when the same shall become due and payable. But it is understood and agreed that the trustees shall not be required
40 at any time to retain from the proceeds of the sales of lands a larger sum of money than will be necessary to pay one coupon or interest warrant then next maturing, and that any excess over said sum at any time in their hands shall be invested in outstanding bonds as aforesaid. And it is also understood and agreed that all the current net earnings and income of said railroad of said party of the first part, after deducting current expenses, shall be appropriated and used from time to time in the payment of the interest on the bonds secured by this instrument, without any claim for reimbursement therefor from the proceeds of the sales of lands.

Article third. The said lands thus granted, as aforesaid, and all other lands which have been or may be hereafter granted to the party of the first part, excepting that portion of any such lands occupied or used, or that may now or hereafter be occupied or used, for the roadway, depots, and other purposes incident and convenient to the proper working of said road, shall be carefully valued and appraised by the party of the first part, its officers or agents, in divisions and parcels, as may seem to them most expedient or convenient for effecting a sale thereof, which allotments and valuations shall be made in writing from time to time as may be found convenient or practicable, and shall be subject to the approval of the trustees, and upon such approval a duplicate thereof shall be deposited with the trustees, also with the treasurer of the party of the first part, which said allotments and valuations may be varied and changed from time to time by the party of the first part, as the value of the lands may be enhanced or depreciated, subject to the
41 approval and deposit as aforesaid.

Article fourth. The party of the first part shall at all times be at liberty to contract for the sale of any parcel or parcels of said land at such approved prices and upon such terms as to payment as shall be fair and reasonable; and such sale or sales may be for cash or on credit, or partly for cash and partly on credit. Any of the bonds aforesaid, with the accrued interest or matured coupons, shall be received at the par value thereof as cash, and the balance of such price may be secured by a mortgage on the parcel or parcels of lands so sold, or the deed of such land may be withheld until full payment. If such sale or sales shall be made for cash, then, upon the payment of such cash, or surrender of such bonds to the trustees, the said trustees shall, by proper deeds or instruments executed by them, or by the duly authorized agent or attorney of the said trustees, grant and convey such parcel or parcels of land to the purchaser or purchasers thereof to hold in fee-simple by full and sufficient deeds. If such sale or sales shall be made upon credit, in whole or in part, then the said trustees may, in their discretion, by proper deeds or instruments executed by them or by the duly authorized agent or attorney of the said trustees, grant and convey

such parcel or parcels of land to the purchaser or purchasers thereof, to hold in fee-simple, and shall receive from each purchaser or purchasers the cash paid, if any, and his or their note or notes, bond or bonds, for the part of such price then unpaid, together with and secured by his or their mortgage or mortgages upon such parcel or parcels of land, and shall hold the same and all moneys received therefrom upon the trusts herein mentioned, or they may withhold the deed of such land until full payment; and in either
42 case, in case of any sale or sales of land made by said trustees under the provisions hereof, the said deeds of the said trustees or of the duly authorized agent or attorney of the said trustees shall be valid and effectual for the purpose of —, and shall invest the purchaser or purchasers named therein with a full, perfect, and complete title to the premises therein described, free and clear of all incumbrances on account of or connected with the issue of the bonds secured by this instrument, and shall include as well the title of the party of the first part hereto as of the trustees aforesaid, and provided, also, that the said trustees may, in their discretion and with the approval of said corporation, lease or otherwise grant from time to time the right to such party or parties, whether individual or corporate, as they may approve, of cutting timber, or using any water power, or mining coal or mineral ores of any kind, or of excavating slate, or of using any of the lands or other property granted, such lease or grant to be on such terms and for such time as said trustees and said corporation may approve; the proceeds, nevertheless, to be applied to the purposes of the trust in the manner herein specified.

Article fifth. The trustees shall have full power, from time to time, to employ such clerks and assistants as they shall find necessary to enable them to discharge properly the duties devolving upon them under the provisions of this instrument in respect to the sale or conveyance of the land granted as aforesaid, or which may hereafter be acquired by the said party of the first part, and conveyed or
43 intended to be conveyed hereby; and they shall have power to appoint one [or] more agents or attorneys to act generally in their behalf in respect thereto, and to make conveyances of the said lands, and from time to time to remove such agent or agents, attorney or attorneys, and substitute or appoint others in the place or places of the agent or attorneys so removed; and all conveyances made and executed by any of such agents or attorneys, and all other acts performed by either within the scope of the power delegated to or conferred upon him by said trustees, and within the scope of the power herein granted to or conferred upon said trustees, shall be legal and valid to every intent and purpose as if executed, done, or performed by said trustees.

Article sixth. In case default shall be made in the payment of any interest on any of the said bonds secured by this instrument, according to the tenor thereof or of the coupons thereto attached, or in the payment of any part of the principal of said bonds, or any of them, when the same shall become payable, or in case default shall be made in the performance or observance of any other covenant of

the party of the first part herein contained, and if any such default shall continue for the period of six months, then, and in either of such cases, it shall be lawful for the said trustees, or the survivor of them, or their successors, personally, or by his or their attorney or attorneys, agent or agents, the said default or failure still continuing, and upon the application of the holder or holders of at least five thousand dollars, par value, of said bonds, to enter into and upon and take possession of all and singular the railroads, lands, personal
44 property and premises hereby conveyed, or intended so to be, and each and every part thereof, without any let or hindrance of or from the said party of the first part, and to have, hold, possess, use, and employ the same, operating by his or their superintendents, managers, receivers or servants, or other attorneys or agents, the said railroad, and conducting the business thereof, and making from time to time all repairs and replacements and such useful alterations, additions, and improvements thereto as may seem to them or him to be judicious, and to collect and receive all tolls, freight, incomes, rents, issues, and profits of the said railroad, lands, personal property and premises, and every part and parcel thereof; and after deducting the expenses of operating the said railroad and conducting the business thereof, and all the expenses incurred in the holding and management of said lands, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes and assessments upon the said premises, or any part or parcel thereof, as well as just compensation for their or his own services, and for the services of such attorneys and counsel as may have been by them or him employed, to apply the moneys arising as aforesaid to the payment of interest on the said bonds in the order in which such interest shall have become or shall become payable ratably to the persons holding the coupons evidencing the right to such interest, and after paying all interest which shall have become due and payable to apply the said moneys to the payment of the principal of such of said bonds as may then be payable and unpaid ratably and without discrimination or preference; and
45 if, after satisfaction thereof, a surplus shall remain to pay over such surplus to the said railroad company, its successors or assigns, or as any court of competent jurisdiction shall order.

Article seventh. In case default shall be made as aforesaid, and shall continue for the period of six months, it shall likewise be lawful for said trustees, or the survivor of them, or their successors, after entry as aforesaid, or other entry, or without entry, personally, or by his or their attorneys, agent, or agents, and upon the application of the holder or holders of at least five hundred thousand dollars, par value, of said bonds, to sell and dispose of all and singular the railroads, lands, property, and premises hereby conveyed or intended so to be, or only so much and such parts thereof as they or he shall deem necessary or proper, with a due regard to the interests of all parties, by public auction in the city of Little Rock, in the county of Pulaski and State of Arkansas, or at such other place or places within the State of Arkansas as the said trustees, or their successors, or the survivor or survivors of them, shall designate, and

at such times as they or he may appoint, having first given notice of the place or places and times of such sale by advertisement published not less than three times a week for six weeks in one or more newspapers published in the city of New York, also in Boston, Massachusetts, and also in one or more newspapers published in the State of Arkansas, and wherever else required by law, and to adjourn the said sale from time to time in their or his discretion, and if so adjourned to make the same without
46 further notice, at the time and place to which the same may be so finally adjourned, and to make and deliver to the purchaser or purchasers of the said premises good and sufficient deed or deeds in the law for the same in fee-simple, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and all other persons claiming or to claim the said railroad, lands, property, and premises, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns, and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in respect to the said railroad, lands, and premises, or any part or parcel thereof, or in operating or maintaining the said railroad or any part thereof, or in managing the business thereof, and of said lands and premises while in the possession of said parties of the second part and their successors, and in arranging for and completing the sale aforesaid, and all the payments which may have been made by them for taxes or assessments on the said premises or any part thereof, as well as compensation for their or his own services; to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not the same shall have previously become payable, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but ratable to the aggregate amount of such unpaid princi-
47 pal and accrued and unpaid interest; and if, after payment of the same in full, a surplus shall remain to pay over such surplus to the said company, or render the same as any court of competent jurisdiction shall order, it being expressly agreed and understood that in no case shall any advantage be taken of any valuation, appraisement, stay, or extension laws by the said party of the first part, nor of any injunction or stay of proceedings, or any process to be applied for or obtained by it to prevent such entry and sale as aforesaid.

And it is hereby declared and agreed that the receipt of the said trustees, or such of them as shall make such sale, shall be a sufficient discharge to the purchaser or purchasers of the premises, which shall be sold as aforesaid, for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof and having such receipt, be liable to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in any manner

whatever answerable for any loss, misapplication, or non-application of such purchase-money or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale. It is also agreed that said trustees may, at their discretion and in behalf of all the holders of the bonds secured by this instrument, bid at any sale made under the order of any court, and that any such bondholders may bid at any sale under this mortgage or any order of court.

48 Article eighth. In case default shall be made in the payment of any half year's interest on any of said bonds at the time and in the manner provided in the coupon issued therewith, the said coupon having been presented and the payment of the interest specified having been demanded, and such default shall continue for the period of six months after the said coupon shall have been due and been demanded as aforesaid, then and thereupon and on the application of the holder or holders of at least five hundred thousand dollars, par value, of said bonds, the principal of all the bonds secured hereby shall, at the election of the trustees, become and be immediately due and payable, anything contained in the said bonds or herein to the contrary notwithstanding.

Article ninth. All the trust moneys which shall come to the hands of the trustees by virtue of these presents, and until the same shall be applied or used in accordance with the provisions herein contained, shall be invested in United States securities or loaned from time to time in such manner as by the laws of Massachusetts permitted to savings banks. All interest derived from such investments or loans shall be applied by said trustees to the payment of the aforesaid bonds secured hereby or coupons.

Article tenth. The said trustees shall also in their discretion have full power to convey or release, upon the written request of the party of the first part, the whole or any part of any lands acquired or held for the purposes of stations, depots, shops, or other buildings, and shall also have power to convey or release, as aforesaid, on like

49 request, any lands or property which in the judgment of the trustees shall not be necessary for use in connection with the said railroad or which may have been held for a supply of fuel, gravel, or other material; and also to convey or release as aforesaid, on like request, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other adjacent building connected with the said railroad or any part thereof, and such lands not occupied by the track and adjacent to such station-house, depot, shop, or other building as the said company may deem expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track or depot or other buildings as in their judgment shall have become expedient, and to make and deliver the instruments necessary or proper to carry the same into effect; but any land which may be acquired for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company from time to time to dis-

pose of, according to its discretion, such portions of the equipment, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for such use, replacing the same by new, which shall be conveyed by the said company to the trustees and made subject to the lien and operation of these presents. All moneys received from any such sales of land and equipment, and not invested by said party of the first part in other lands and equipments, shall be paid over to said trustees to be by them applied in the same manner as proceeds arising from the sales of lands.

50 Article eleventh. It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustee or trustees for the time being, whether original or substituted, and whenever a vacancy shall exist to mean the surviving or continuing trustees or trustee, and such trustees or trustee shall, during such vacancy, be competent to exercise all the powers by these presents granted to or conferred upon the parties of the second part. And it is further mutually agreed by and between the parties hereto, and it is hereby declared to be a condition upon which the parties of the second part have assented to these presents, that the said trustees shall not be in any manner responsible for any default or misconduct of any agents, depository, or persons employed by them in good faith, nor except for their own wilful default or misconduct, nor shall any trustee be liable for the default of any cotrustee; that in all cases said trustees shall be authorized to pay such reasonable compensation as they shall deem proper to all attorneys, servants, and agents they may reasonably employ in the management of their trust; that the said trustees shall be entitled to just compensation for all services which they, or either of them, may hereafter render in their trust, to be paid by the said company or out of the income of the property, and for that purpose may at any time apply to the courts without notice to any person, except the said party of the first part, its successors or assigns; that said trustees or any successor may resign or discharge themselves or himself of the trust created by these presents by notice in writing to the said company and to the existing trustee, if

51 there be such, at least three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice and upon the due execution of the conveyances hereinafter required.

That in case at any time hereafter the said trustees, or any trustees or trustee hereafter appointed, shall die or resign or become uncapable or unfit to act in the said trust, a successor or successors to such trustee or trustees shall be appointed by the surviving or continuing trustee, if any such there be, with the consent of the said railroad company, and the trustee or trustees so appointed, with the trustee surviving or continuing, if any, shall thereupon become invested with all and singular the powers, authorities, and estates granted to or conferred upon the party of the second part by these presents, and all the rights and interests requisite to enable them or him to execute the purposes of this trust without any further assur-

ance or conveyance, so far as such effect may be lawful, but the surviving or continuing trustee shall immediately execute all such conveyances and other instrument as may be fit or expedient for the purpose of assuring the legal estate in the premises jointly with himself to the trustee so appointed; and upon death, resignation, or removal by any court of competent jurisdiction of any trustee, or an appointment in their or his place in pursuance of these presents, all their or his powers and authorities by virtue hereof shall cease; and all the estate, right, title, and interest in the said premises of any trustee so dying, or resigning, or being removed, shall, if there be cotrustees surviving or continuing in office, wholly cease and determine; but the said trustee so
52 resigning or being removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance, to vest in such new trustee jointly with the continuing trustee, and upon the trusts herein expressed, all the lands, property, estates, rights, and franchises which may be at that time held upon the said trusts: Provided, nevertheless, and it is hereby declared and agreed, That in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint, in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or, if the trust be wholly vacant, by holders of the bonds secured hereby to the aggregate amount of five hundred thousand dollars, to any court of competent jurisdiction in the State of Arkansas for the appointment of a new trustee or new trustees.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, their and his successors and assigns, that the said party of the first part, its successors and assigns, shall and will, from time to time and at all times hereafter, and as often as thereunto requested by the trustees under this indenture, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for
53 the better assuring unto the said parties of the second part, and the survivor of them, their and his successors in said trust, upon the trusts herein expressed, the lands, premises, property, railway equipments, and appurtenances hereinbefore mentioned, and to which the said railroad company is or may hereafter for any reason become entitled, or which the said company, its successors or assigns, may in any manner acquire, as by the said trustees, or their counsel learned in the law, shall be reasonably advised, devised, or required.

Article twelfth. If the said party of the first part shall well and truly pay the sum of money herein required to be paid by it, and all interest thereon, at the times and in the manner herein specified, and shall well and truly keep and perform all the covenants and

agreements herein required to be kept and performed by the said party, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said parties of the second part, as trustees aforesaid, shall cease, determine, and become void; otherwise the same shall be, continue, and remain in full force and virtue.

In witness whereof the said Little Rock and Fort Smith railway has caused its corporate seal to be hereto affixed, and the same to be attested by the signature of its president and treasurer, and the said parties of the second part have hereunto set their hands and seals in token of their acceptance of the trust hereby created, the day and year first above written.

____ ____,
*President of the Little Rock and Fort Smith Railway.*

____ ____,
*Secretary of the Little Rock and Fort Smith Railway.*

54 Signed, sealed, and delivered in the presence of—

____ ____.

55 EXHIBIT "B."

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, E. B. Moore, secretary of state of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of Schedules 1 and 3 of the return made by the Little Rock and Fort Smith Railway Company under section 46 of an act to revise and amend the revenue laws of Arkansas, approved March 31st, 1883, and filed in my office on the first Monday in March, 1885, as appears by comparing the same with the original roll of said schedules now on file in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Little Rock, this 31st day of August, A. D. eighteen hundred and eighty-six.

E. B. MOORE,
*Sec. of State.*

56 *Annual Return of the Little Rock and Fort Smith Railway Company to the Secretary of State of Arkansas, as Required by the 46th and 48th Sections of the State Revenue Law.*

SCHEDULE NUMBER 1.

Showing the property denominated "railroad track" belonging to or controlled by the Little Rock and Fort Smith Railway Company on the first Monday in March, 1885, as required of railroad companies according to section 46 of an "Act to revise and amend the revenue laws of Arkansas," approved March 31st, 1883.

| Counties. | Value of buildings on right of way. See sec. 3. | Track. | | | |
|---|---|---|---|---|---|
| | | Main. | | Side or turnout. | |
| | | Miles. | Value in county. | Miles. | Value in county. |
| Pulaski | $4,350 | 16.15 | $28,262 50 | 2.65 | $4,094 25 |
| Faulkner | 1,150 | 19.92 | 34,860 00 | 1.37 | 2,116 65 |
| Conway | 1,900 | 22.14 | 38,745 00 | 2.08 | 3,213 60 |
| Pope | 2,850 | 27.55 | 48,212 50 | 2.24 | 3,460 80 |
| Johnson | 2,500 | 31.44 | 55,020 00 | 2.58 | 3,986 10 |
| Franklin | 1,850 | 24.37 | 42,647 50 | 1.02 | 1,575 90 |
| Crawford | 1,350 | 18.21 | 31,867 50 | .71 | 1,096 95 |
| Sebastian | 1,250 | 5.22 | 9,135 00 | .58 | 896 10 |
| | $17,200 | 165.00 | $288,750 00 | 13.23 | $20,440 35 |

57 *Schedule No. 3.*

Number, description, and value of station-houses, depots, machine-shops, water-tanks, and other buildings belonging to the Little Rock and Fort Smith Railway Company, situated upon the "right of way" of said road in — county, Arkansas.

| Name of station. | Description of buildings on right of way. | | |
|---|---|---|---|
| | Kind of building | Material of which constructed. | Value. |
| | *Paluski Co.* | | |
| Argenta | Fr't depot | Frame | $700 |
| | Mach. shops | | 1,500 |
| | Round-house | | 500 |
| | Car-shop | | 700 |
| | Coach-shed | | 300 |
| | Master mechanic's off. & store-room | | 200 |
| I. M. Crossing | Pass. depot—½ this Co. | | 250 |
| Marche | Pass. & fr't depot | | 250 |
| | | | $4,350 |
| | *Faulkner Co.* | | |
| Palarm | Depot | | $200 |
| | Section-house | | 100 |
| Gold Creek | Water-tank | | 150 |
| | Section-house | | 100 |
| Conway | Pass. & fr't depot | | 500 |
| Cadron | Section-house | | 100 |
| | | | $1,150 |
| | *Conway Co.* | | |
| Plummerville | Pass. & fr't depot | | $550 |
| | Section-house | | 150 |
| | Water-tank | | 200 |
| Morrillton | Pass. depot | | 700 |
| Germantown | Fr't depot & platform | | 200 |
| | Section-house | | 100 |
| | | | $1,900 |

58 *Schedule No. 4,*

Showing the property denominated "railroad track" belonging [to] or controlled by the Little Rock and Fort Smith Railway Company on the first Monday in March, 188–, located in the several cities and incorporated towns in the county of —, State of Arkansas.

| City or incorporated town. | | Total value. |
|---|---|---|
| | *Pope County.* | |
| Atkins | Pass. & fr't depot | $400 |
| Galla Creek | Pas. & fr't depot | 150 |
| | Water-tank | 150 |
| Russellville | Pass. depot | 700 |
| | Fr't depot | 750 |
| | Section-house | 150 |
| Mill Creek | Pas. & fr't depot | 200 |
| | Water-tank | 150 |
| London | Pass. & fr't depot | 200 |
| | | $2,850 00 |
| | *Johnson Co.* | |
| Piney | Pass. & fr't depot | $250 |
| | Section-house | 100 |
| Knoxville | Pass. & fr't depot | 200 |
| | Section-house | 100 |
| Cabin Creek | Pas. & fr't depot | 250 |
| Clarksville | Pass. & fr't depot | 200 |
| | Water-tank, eng., &c. | 500 |
| Spadra | Pass. & fr't depot | 150 |
| Hartmen | Pas & fr't depot | 300 |
| | Section-house | 150 |
| Coal Hill | Pass. & fr't depot | 300 |
| | | $2,500 00 |

59 *Schedule No. 4,*

Showing the property denominated "railroad track" belonging to or controlled by the Little Rock and Fort Smith Railway Company on the first Monday in March, 188–, located in the several cities and incorporated towns in the county of —, State of Arkansas.

| City or incorporated town. | | Total value. |
|---|---|---|
| | *Franklin Co.* | |
| Altus | Pass. depot | $450 |
| | Fr't depot | 150 |
| Ozark | Pass. & fr't depot | 400 |
| | Section-house | 150 |
| | Water-tank | 150 |
| White Oak | Section-house | 150 |
| Mulberry | Pas. & fr't depot | 250 |
| | Water-tank | 150 |
| | | $1,850 00 |
| | *Crawford Co.* | |
| Alma | Pass. & fr't depot | $300 |
| | Section-house | 150 |
| Van Buren | Pass. & freight depot | 400 |
| | Round-house | 350 |
| | Water-tank | 150 |
| | | $1,350 00 |
| | *Sebastian County.* | |
| Fort Smith | Pass. depot | $700 |
| | Freight depot | 400 |
| | Water-tank | 150 |
| | | $1,250 00 |

60 EXHIBIT "C."

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, *May 11th*, 1885.

* * * * * * *

The Little Rock and Fort Smith railroad was appraised as follows:

Pulaski county:

| | |
|---|---|
| Length of main line, 16.15 m | $58,947 50 |
| " side track, 2.65 | 3,312 50 |
| Buildings and improvements | 7,000 00 |
| Total | $69,260 00 |

| | |
|---|---|
| Faulkner county: | |
| Length of main line, 19.92 m. | $72,780 00 |
| " side track, 1.37 | 1,712 50 |
| Buildings and improvements | 2,100 00 |
| Total | $76,520 50 |
| Conway county: | |
| Length of main line, 22.14 m. | $80,811 00 |
| " side track, 2.08 | 2,600 00 |
| Buildings and improvements | 2,700 00 |
| Total | $86,111 00 |
| 61 Pope county: | |
| Length of main line, 27.55 m. | $100,557 50 |
| " side track, 2.24 | 2,800 00 |
| Buildings and improvements | 4,500 00 |
| Total | $107,857 50 |
| Johnson county: | |
| Length of main line, 31.44 m. | $114,756 00 |
| " side track, 2.58 | 3,225 00 |
| Buildings and improvements | 3,550 00 |
| Total | $121,531 00 |
| Franklin county: | |
| Length of main line, 47.37 m. | $88,950 50 |
| " side track, 1.02 | 1,275 00 |
| Buildings and improvements | 2,900 00 |
| Total | $93,125 50 |
| Crawford county: | |
| Length of main line, 18.21 m. | $66,466 50 |
| " side track, .71 m. | 887 50 |
| Buildings and improvements | 2,100 00 |
| Total | $69,454 00 |
| 62 Sebastian county: | |
| Length of main line, 5.22 m. | $19,053 00 |
| " side track, .58 | 725 00 |
| Buildings and improvements | 1,750 00 |
| Total | $21,528 00 |

* * * * * * *

63 And on April 21st, 1886, the complainants filed their amendments to bill of complaint, which *is* as follows:

*Amendments to Bill.*

Circuit Court of the United States, Eastern District of Arkansas.

C. W. HUNTINGTON and GEORGE RIPLEY, Trustees,

*v.*

R. W. WORTHEN *et als.*

And now come the plaintiffs and by leave of this honorable court amend their bill of complaint as follows, to wit:

1st. By inserting after the word "county," on the last line of the 1st page, the following: "Geo. W. Clark, as he is the county clerk of the county of Pulaska; J. V. Mitchell, as he is the county clerk of the county of Faulkner; M. L. Asbury, as he is the county clerk of the county of Conway; James Potts, as he is the county clerk of the county of Pope; Q. B. Poynor, as he is the county clerk of the county of Johnson; A. J. Nichols, as he is the county clerk of the county of Franklin; J. Neal, as he is the county clerk of the county of Crawford, and J. H. McClure, as he is the county clerk of the county of Sebastian."

2nd. By inserting after the words "chancery court," on 8th line from the bottom of the 25th page, the following: "The plaintiffs further aver that said Little Rock and Fort Smith railway has appealed from said decision and judgment of said supreme court of said State to the Supreme Court of the United States, and to
64 that end has sued out a writ of error, returnable to the next term of said Supreme Court of the United States, to wit, at the October term, 1886, of said last-named court, but the plaintiffs aver that said suit cannot be reached on the docket of said court and be argued or decided before the wrongs and injuries hereinafter complained of will have been perpetrated, unless the defendants be restrained and enjoined as hereinafter prayed."

3rd. By inserting after the word "collected," on the 3rd line from the top of page 28, the following: "That the collector of each county is required to attend, at the court-house in his county, on the 2nd Monday in April of each year, and then and there, within certain prescribed hours, to proceed for sale — *each* tract of land, city or town lot for the taxes, penalty, and costs thereon, and the person offering at such sale the amount of taxes, penalty, and costs due on the whole tract or lot for the smallest subdivision thereof shall be the purchaser thereof; and if no person shall offer or bid the amount of taxes, penalty, and costs due on said tract, lot, or parcel thereof, then said collector is required to bid the same off in the name of the State of Arkansas, bidding therefor the amount of taxes, penalty, and costs due thereon, and said collector is also required to continue said sales from day to day until each tract of land, city or town lot or part thereof shall be sold. The clerk of said county court is also required to attend all such sales of delinquent lands by said collector of said county, and to make a record

thereof describing the several tracts of land, stating the part thereof sold, and the amount of taxes, penalty, and costs
65 due thereon and to whom sold, and also to record in a separate book each tract of land, town or city lot sold to the State, together with the taxes, penalty, and costs due thereon. Said county clerk is also required immediately after such sale to make out and certify to the auditor of State a copy of each of said bids as recorded in said book, together with an abstract thereof, showing the total valuation of the property contained in each and the total amount of taxes, penalty, and costs thereon in each. "Said collector is also required to make out and deliver to the purchaser of any land sold as aforesaid a certificate of purchace, describing the land sold, which certificate is assignable in law and an assignment thereof vests in the assignee and his legal representatives all the right, title, and estate of the original purchaser. The clerk of the county court is also required immediately after the sale to transfer upon the tax-books all lands sold for taxes to the name of the purchaser. All lands sold for taxes may be redeemed in the manner prescribed in said act at any time within two years from the date of sale, and if the same shall remain unredeemed the county clerk of each county is required, on the production of the certificate of purchase, to execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the tract or lot described in each certificate, such deed to be in the form and to have the force and effect set forth in said act. Said county clerk is also required, immediately after the expiration of said two years, to make out a certificate of sale to the State for all lands bought, as shown by the aforesaid records
66 in his office, which have not been redeemed, and state therein the amount of the taxes, penalty, and costs thereon, and cause the same to be recorded in the recorder's office of the county, 'and thereupon,' under the provisions and in the words of said act, the title to all lands embraced in such certificate shall vest in the State, and the clerk shall immediately transmit such certificate to the commissioner of State lands, and thereupon the said lands shall be subject to disposal as other forfeited lands shall be."

4th. By inserting after the figures "1885," on the 2nd line from the top of 32nd page, the following:

"Or if said several county collectors, or any of them, shall have sold so much and such parts of said 'railroad track' as is situated in their several counties before the writs of injunction herein prayed for shall have issued out of this honorable court and been served upon said several county collectors, that then and in such case said several county collectors and their deputies, agents, and servants may be restrained and enjoined, both during the pending of this suit and perpetually, from making out and delivering to the purchaser or purchasers of any part of the 'railroad track' of said corporation, as the same is defined in said act, a certificate or certificates of such purchase or purchases, and that said several county clerks, their deputies, agents, and servants, may also be restrained and enjoined from transferring upon the tax-books of their said several and respective counties any part of the aforesaid 'railroad track'

of said corporation that may be situated in his said county and that has been sold or attempted or pretended to have been sold by said
67 every and respective collector to any purchaser or purchasers or from making any entries whatever in said book relating to such pretended purchase, and that said several county clerks may also be restrained and enjoined, both during the pending of this suit and perpetually, from making out and certifying to the auditor of said State a copy or copies of each and every and all of such lists and parts of said 'railroad track,' as defined in said act, as may have been sold or pretended to have been sold to said State, and also from executing or delivering to any purchaser or purchasers of said 'railroad track' a deed of conveyance of said 'railroad track,' or any part thereof, and also from making out a certificate or certificates of sale to said State for any part of said 'railroad track,' and from recording such certificate or certificates in the recorder's office of their said several and respective counties, and from transmitting or attempting in any way to transmit such certificate to the commissioner of State lands of said State."

And on April 21st, 1886, the following plea in bar and demurrer was filed:

68 *Plea in Bar.*

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

In the Circuit Court.

C. W. HUNTINGTON and GEORGE RIPLEY, Trustees, Complainants,
*v.*
R. W. WORTHEN *et al.*, Defendants.

The joint and several plea and demurrer of R. W. Worthen and the said several other defendants to the bill of complaint and the amendment thereto of the said complainants, C. W. Huntington and George Ripley, trustees of the Little Rock and Fort Smith railway.

These defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill and the amendment thereto set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of the said bill and the amendment thereto say that heretofore, to wit, on the 29th day of December, A. D. 1885, the said corporation, Little Rock and Fort Smith railway, of which the said complainants were then and are now trustees under the deed of trust mentioned in their said bill of complaint, filed its complaint in equity in the chancery court of Pulaski county, in the State of Arkansas, against the defendants, R. W. Worthen, as collector of Pulaski county; A. J. Witt, as collector of Faulkner county; R. H. Speer, as collector of Conway county; J. H. Quinn, as collector of Pope county; W. S. Jett, as collector of Johnson county; J.
69 T. Tolleson, as collector of Franklin county; W. L. Taylor, as collector of Crawford county, and John T. Williams, as

collector of Sebastian county, in and by which complaint the same identical facts were stated and the same identical relief was sought and prayed for as is stated and prayed for in the bill of complaint of the complainants herein; that each and all of said defendants appeared in said chancery court and made answer to said complaint; that said court then and there had full jurisdiction of the persons of said defendants and of the subject-matter of said complaint; that such proceedings were thereafter had in said court in said cause that, to wit, on the 2nd day of February, A. D. 1886, a day of the regular term of said court, a decree was rendered therein denying and refusing the prayer of said complaint and dismissing the same for want of equity; that said corporation appealed from such judgment and decree of said chancery court to the supreme court of the State of Arkansas, and these defendants herewith file a transcript of the records and proceedings of said chancery court in said cause, marked Exhibit A, and pray that the same may be taken and considered as a part of this plea.

And these defendants further say that said corporation prosecuted its said appeal in said supreme court, and caused the same to be advanced upon the docket of said court, so that on, to wit, the 27th day of March, A. D. 1886, said supreme court rendered its judgment and decree therein, in and by which the judgment and decree of the chancery court of Pulaski county aforesaid were in all
70 things affirmed; and these defendants herewith file a transcript of the opinion and judgment and decree of said supreme court in said cause, marked Exhibit B, and pray that the same may be taken and considered as part of this plea.

And these defendants in fact say that said cause so determined in said supreme court was and is the same identical cause as between the same parties in interest and for the same subject-matter as this cause, and is none other.

All which matters and things these defendants do aver to be true, and they plead the same in bar to the complainants' bill and amendments thereto, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to the said bill, and pray to be hence dismissed, with their costs and charges in that behalf most wrongfully sustained.

And these defendants, by special leave of the court, demur to said bill of complaint and amendments thereto, because they say that the said bill and amendments thereto do not contain any matter of equity whereon this court can ground any decree or give to the complainants any relief against these defendants or either of them.

Wherefore they pray, &c.

DAN. W. JONES,
*Attorney General of Ark's, for Defendants.*

71 Which Exhibit A to plea is as follows:

STATE OF ARKANSAS, *County of Pulaski:*

In the Pulaski Chancery Court.

Be it remembered that [at] a term of the Pulaski chancery court, begun and held at Little Rock, Arkansas, on the first Monday in October, A. D. 1885—present, the Hon. D. W. Carroll, chancellor, presiding—among others, the following — in said court on the — day of ——, 1886:

LITTLE ROCK AND FORT SMITH RAILWAY, Plaintiff,
*v.*
R. W. WORTHEN, as Collector of Pulaski County; A. J. Witt, as Collector of Faulkner County; R. H. Speer, as Collector of Conway County; J. H. Quinn, as Collector of Pope County; W. S. Jett, as Collector of Johnson County; J. T. Tolleson, as Collector of Franklin County; Wm. L. Taylor, as Collector of Crawford County; John T. Williams, as Collector of Sebastian County, Defendants. } 2068.

72 *Complaint.*

Pulaski Chancery Court.

LITTLE ROCK AND FORT SMITH RAILWAY
*v.*
R. W. WORTHEN, as Collector of Pulaski County; A. J. Witt, as Collector of Faulkner County; R. H. Speer, as Collector of Conway County; J. H. Quinn, as Collector of Pope County; W. S. Jett, as Collector of Johnson County; J. T. Tolleson, as Collector of Franklin County; Wm. L. Taylor, as Collector of Crawford County; John T. Williams, as Collector of Sebastian County. } 2068.

73 The plaintiff represents that it is a corporation organized under the laws of Arkansas and engaged in operating a railroad from Little Rock to Fort Smith, in Sebastian county, and the defendants are the sheriffs and *ex-officio* collectors of said counties; that by the provisions of the act of March 31st, 1883, regulating and providing for the collection of the revenues of this State, the Governor, secretary of state, and the auditor of public accounts are constituted a board of railroad commissioners for this State, and are created a tribunal for assessing certain railroad property situated in this State in the manner provided in said act; and it is made the duty of every person, company, and corporation owning a railroad in this State in the month of March, 1883, and every two years thereafter to make out and file with the secretary of state a sworn statement and schedule showing the length of the main and all side tracks, switches, and turnouts in each county in which the road may be located and each city or town in each county through which the same may run; also a statement of the value of the improvements, stations, and structures, including the railroad track located on the

right of way, which property is denominated "railroad track" and is assessed as real estate; that by the provisions of said act said board is required to meet on the first Monday in April in each year, and authorized and empowered to assess the property required to be returned to the secretary of state in the manner aforesaid; and after the assessment thereof it is made the duty of the secretary of state to certify to the assessor of each county in which said railroad is located so much of said list as values such railroad track
74 as is located in such county and in any city or town of such county, and the same is to be by the assessor listed as real estate. It is expressly provided in said act that embankments, tunnels, cuts, ties, trestles, and bridges shall not be included in said schedule or statement as a part of the railroad track or valued, and the power of said board in the matter of such assessment is expressly limited and confined to the property required to be returned in said schedule or statement.

Plaintiff represents that its road is located in the counties of Pulaski, Faulkner, Conway, Pope, Johnson, Franklin, Crawford, and Sebastian.

That plaintiff, during the month of March, 1885, made out and filed with the secretary of state a sworn statement, showing the length of the main and all side tracks, switches, and turnouts in each county, city, and town in which said road is located; also a sworn statement of the value of all improvements, stations, and structures, including the railroad track located on its right of way. Said statement did not include or value embankments, tunnels, cuts, ties, trestles, or bridges.

That said board subsequently met at the time prescribed by law for the purpose of assessing said property, and therefore illegally, and without any authority whatever so to do, made and had served upon plaintiff an order requiring it to make and file with the board a statement showing the value of all embankments, tunnels, cuts, ties, trestles, and bridges. A copy of said order is herewith filed, marked Exhibit A. Whereupon said board proceeded to assess plaintiff's railroad track, and included in said assessment a
75 large amount for the value of embankments, tunnels, cuts, ties, trestles, and bridges. The pretended assessment as made by said board amounts to $— in the aggregate, and was apportioned as follows among the several counties, cities, and towns in which said road is located, viz.:

| | |
|---|---|
| In Pulaski county | $69,260 00 |
| In Faulkner county | 76,520 50 |
| In Conway county | 86,111 00 |
| In Pope county | 107,857 50 |
| In Johnson county | 121,531 00 |
| In Franklin county | 93,125 50 |
| In Crawford county | 69,454 10 |
| In Sebastian county | 21,528 00 |
| In the city of Little Rock, in Pulaski county | |
| In the city of Conway, in Faulkner county | 4,140 00 |

| | |
|---|---|
| In the town of Plummerville, in Conway county | 1,740 00 |
| In the town of Morrillton, in Conway county | 3,280 00 |
| In the town of Atkins, in Pope county | 3,359 50 |
| In the town of Russellville, in Pope county | 4,907 50 |
| In the town of Clarksville, in Johnson county | 3,867 50 |
| In the town of Coal Hill, in Johnson county | 2,890 00 |
| In the town of Ozark, in Franklin county | 3,962 50 |
| In the town of Mulberry, in Franklin county | 1,567 50 |
| In the town of Van Buren, in Crawford county | 3,070 00 |
| In the town of Fort Smith, in Sebastian county | 2,825 00 |

The valuation of its railroad track, as returned by plaintiff, amounts, in the aggregate, to $—, and, apportioned among the
76 several counties, cities, and towns aforesaid, would be as follows, viz:

| | |
|---|---|
| In Pulaski county | $36,706 75 |
| In Faulkner county | 38,126 65 |
| In Conway county | 43,858 60 |
| In Pope county | 54,523 30 |
| In Johnson county | 61,506 10 |
| In Franklin county | 46,073 30 |
| In Crawford county | 34,316 95 |
| In Sebastian county | 11,281 15 |

Plaintiff represents that the assessment of its railroad track was very largely increased by reason of the aforesaid action on the part of said board in including in said assessment embankments, cuts, ties, trestles, and bridges, but plaintiff does not know and cannot ascertain to what extent the assessment is thereby affected, as the same is made *in solido* and is incapable of separation; and it avers that the entire assessment of said railroad track is vitiated and rendered void by the unlawful action of said board.

The plaintiff further avers that the aforesaid act, approved March 31st, 1883, and entitled "An act to revise and amend the revenue laws of Arkansas," contains and comprises all the laws of this State which are now and which have been in force ever since the approval of said act regulating the assessment of taxes on all classes and descriptions of properties throughout this State; that for and during the years 1883 and 1884 all taxes upon the properties of rail-
77 roads in this State, including the properties of the plaintiff railroad corporation, have been assessed and levied in accordance with the provisions of said act, and in no other way or manner and by no other method; that said act was passed pursuant to the power delegated to the Legislature of said State in and by sec. 5, art. 9, of the constitution of said State, which provides as follows, to wit:

"All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, provided the General Assembly shall have power from

time to time to tax hawkers, peddlers, ferries, exhibitions, and privileges in such manner as may be deemed proper: Provided, further, That the following shall be exempt from taxation: Public property used exclusively for public purposes, churches used as such, cemeteries used exclusively as such, school buildings and apparatus, libraries and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity."

The plaintiff avers that, by virtue of said sec. 5, art. 9, of the constitution of this State, supreme and absolute power and authority is delegated to the Legislature to prescribe the way, manner, and mode by which the various descriptions of properties throughout the State and subject to taxation shall be classified and valued and the taxes thereon shall be assessed, levied, and collected, subject only
78 to the limitations and restrictions contained in said article 9, section 5, and also in section 6 thereof, which provides that "all laws exempting property from taxation other than as provided in this constitution shall be void;" that in and by said act of March 31st, 1883, separate and distinct methods are provided, among other things, for ascertaining the value of real estate and personal estate, and also for ascertaining the value of merchandise, of the property of manufacturers, banks, brokers, and stockholders employed in their business, respectively, of the property of express and telegraph companies, the tangible and intangible properties of gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and certain other companies or corporations incorporated under the laws of this State, and also the mode of ascertaining the value of the properties of railroads.

The plaintiff is advised and believes, and therefore avers, that in the language of the Supreme Court of the United States, in the case of the Cincinnati N. O. & T. R. R. Co. *v.* Commonwealth of Kentucky, the decision in which case was filed in said court November 16th, 1885, and substituting the word "Arkansas" for "Kentucky," there is nothing in the constitution of Arkansas that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality in respect to the subject only requires the same means and methods to be applied impartially to all
79 the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection therefore to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose."

The plaintiff well hoped that the present board of railroad commissioners would follow, as their predecessors in office had heretofore followed, the requirements and provisions of said act of March 31st,

1883, as it was their sworn duty to do, both as executive officers of the State and also in their capacity as railroad commissioners, in the mode and manner of listing and valuing the property of the plaintiff corporation for the purposes of taxation, but now so it is that, utterly disregarding their official oaths as executive officers of the State as well as their oaths as railroad commissioners, — have not only, without any power or authority, but also in direct violation of the plain and express conditions of said act in that behalf enacted, wilfully and deliberately included in their list and schedule of property of this plaintiff corporation subject to taxation the following, to wit: embankments, cuts, ties, trestles, and bridges, whereas it is expressly provided in the 46th section of said act that "such schedule shall not include nor value embankments, tunnels, cuts, ties, trestles, or bridges," and valued the same as subject to taxation, and this under the pretense that the mode of valuation prescribed
80 by said act is contrary to the provisions of said section 6, art. 9, of the Constitution of this State, and therefore utterly null and void, thus wilfully disobeying the laws of the State which they had sworn fearlessly, impartially, and honestly to execute, and arbitrarily substituting their will for that of the Legislature, and abrogating to themselves judicial as well as legislative powers.

The plaintiff is advised and believes, and therefore avers, that all said acts and doings on the part of said railroad commissioners constitute and are a usurpation of powers in nowise delegated to them, and an encroachment upon the powers in express terms delegated to the judicial and legislative departments of the government of the State; that railroad property in this State can be valued for purposes of taxation, and taxes thereon assessed, levied, and collected only by virtue of a statute in that behalf enacted; that by reason of the aforesaid illegal and despotic acts of said railroad commissioners the aforesaid pretended valuation and assessment by said commissioners of the "railroad track" of the plaintiff railroad corporation is utterly null and void, as being wholly without warrant of law, and that the collection of all taxes levied under such illegal and arbitrary valuation and assessment ought, in law, equity, and good conscience, to be restrained and enjoined; that it is a well-settled maxim of law that every act of the Legislature, duly enacted, is presumed to be a constitutional enactment until it is otherwise adjudged by the judicial department of the Government, and no such adjudication has been had in regard to the aforesaid act of
81 March 31st, 1883, or any of its parts or provisions; that it is wholly immaterial in this case whether the aforesaid provisions of said act, which said railroad commissioners not only ignored, but deliberately and wilfully refused to obey, is or is not a constitutional exactment, inasmuch as said commissioners are sworn and in duty bound to execute, and not to nullify, the aforesaid provisions of said act until the same are declared to be unconstitutional by competent judicial authority; that by reason of said unlawful and arbitrary acts and doings of said railroad commissioners in connection with the assessment and valuation of the "railroad track" of the plaintiff corporation, the taxes levied thereon, and which are

now sought to be collected by the collectors of said several counties, have been levied without due process of law, and in direct violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," inasmuch as it is a direct contradiction in terms and the height of absurdity to maintain that taxes assessed in violation of law are assessed by due process of law.

The plaintiff further avers that while, for the reasons hereinbefore particularly set forth, it is advised that it is wholly immaterial whether the aforesaid provisions of said act of March 31st, 1883, are constitutional or not, in order to entitle it to the relief sought, inasmuch as said taxes have not been assessed and levied upon its

"railroad track" pursuant to any law of the State, but

82 wholly and solely by the arbitrary will and pleasure of said railroad commissioners and without regard to the rights of the plaintiff, the plaintiff is advised and believes, and so avers, that the aforesaid provisions of said act, which said railroad commissioners wilfully ignored and deliberately violated, are in all respects valid and binding enactments; that by the provisions of said section 5, art. 9, of the constitution of this State express power is delegated to the Legislature to prescribe the manner and mode by which the value of railroad property shall be ascertained, to wit: "In such manner as the General Assembly shall direct, making the same equal and uniform throughout the State;" that under and by virtue of the power thus expressly conferred upon the Legislature it is their sole duty and province to prescribe the mode of valuing railroad property for the purpose of taxation, and in their discretion to provide whether all the various and diverse elements which, when combined, constitute a railroad shall be taken into the account or whether certain of said elements ought in equity and justice to be excluded in estimating the value and earning capacity of such railroad, and that so long as the same method of valuing such railroad tracks is applicable to all railroads within the State and no discrimination exists in favor of or against any railroad within the State the provisions of said sec. 5 relating to equality and uniformity are satisfied and complied with; that a railroad track is a peculiar species of property, in which there is no absolute right of ownership, and being, as is declared by the constitution of this State, a "public

highway;" that the business of a railroad company being

83 solely that of a common carrier, its value does not by any means depend simply upon the costs of its track, but upon its capacity to make net earnings over and above the cost of maintenance of way and equipments and the operating expenses thereof; that certain elements which enter into the construction of a railroad, such as embankments, tunnels, cuts, ties, trestles, and bridges, not only increase the original cost of such road, but also, from their very nature, increase the cost of maintaining the track in safe repair, and to that extent diminish its capacity from making net earnings and the value of its business as a common carrier; that the ques-

tion, What elements shall be included and what elements excluded in ascertaining the value of a railroad track for the purpose of taxation? is not a judicial question, but one which is to be determined solely by the Legislature, from time to time, in the exercise of its discretion, and which, when determined, must stand as the law of the State until altered, amended, or repealed; that when the Legislature has prescribed that certain elements shall be excluded in ascertaining the true value of a railroad track all the officers of the State, judicial as well as executive, are in law bound to treat such expressions of the legislative will, not as an attempt illegally to exempt property from taxation, but simply as a legitimate and lawful exercise of the discretion imposed upon them by the constitution of the State relating to the just and proper method of ascertaining the value of the railroad track of — railroad corporation for the purposes of taxation.

If the executive and judicial officers of the State can nullify the exercise of the legislative discretion in this instance, where it has been in express terms imposed by the constitution of the State, they can also so nullify the exercise of such legislative discretion in
84 all cases, and the only resource left for the maintenance of constitutional government in this State is by an appeal to the Supreme Court of the United States.

The plaintiff further avers that prior to the passage of the aforesaid act of March 31st, 1883, the mode of ascertaining the value of the railroad tracks of railway corporations was based upon the net receipts of such corporations from its business as a common carrier as was provided in the act of the year 1879.

The plaintiff is advised and believes and avers that if the aforesaid method of ascertaining the value of railroad tracks as is provided for in the aforesaid act of March 31st, 1883, shall be held to be unconstitutional, null, and void, then the only mode by which the value of railroad tracks for the purposes of taxation can be ascertained is under the aforesaid act of 1879, for the reason that the mode of valuation provided for in said act of 1883 must, so far as relates to railroad tracks, be taken as a unit, incapable of division and separation, and a mode directly contrary to the one attempted to be provided for by the Legislature cannot be substituted in its place.

The plaintiff further represents that it has paid the taxes assessed and levied upon its rolling-stock and all other property not included in the term "railroad track," and avers that it would willingly pay the taxes upon all its property denominated in said act of March 31st, 1883, as "railroad track" had any lawful valuation and assessment been made thereof or any lawful levy been made thereon, but no such lawful valuation, assessment, and levy had as yet been made for the reasons hereinbefore set forth.

Plaintiff further avers that it would willingly tender to the several collectors of said several counties the amounts re-
85 spectively due from the plaintiff as taxes upon its railroad track for the year 1885, and upon their refusal to receive the same in full payment of all such taxes as due thereon bring the

same into this honorable court if any means existed by which the plaintiff could ascertain the amounts severally due said several collectors; that under the provisions of sec. 49 of said act it is made the duty of the secretary of state to certify, and the secretary of state has certified to the assessor of each county in which the plaintiff's railroad is situated so much of said list and schedule assessed by said railroad commissioners as contains the valuation of so much of said railroad track as is located in such county, and in any city or town of such county, and such assessor is required in each of said counties to list and assess, and the assessors of said several counties have listed and assessed, the same as real estate, and that for the reason that said railroad commissioners have so included and intermingled in their list and schedules so transmitted to the assessors of each of said counties certain elements, such as embankments, cuts, ties, trestles, and bridges, which the forty-sixth section of said act expressly provides should not be included, as is hereinbefore averred, it is utterly impossible for the plaintiff to separate the lawful from the unlawful assessments and valuations, and to ascertain the amounts lawfully due the collectors of each said counties. But when the amounts lawfully due said several defendant collectors shall have been ascertained the plaintiff offers hereby and herein to pay such amounts to said several defendant collectors within such time as may be prescribed by law.

86 The plaintiff further avers that the aforesaid county assessors have delivered to the several county clerks of said counties the list or schedule of assessments so certified as aforesaid by the secretary of state for said several counties, and said several county clerks have extended on the tax books of said several counties against said property so assessed the State, county, and municipal taxes, as follows, to wit: State taxes for general purposes, — mills; for school purposes, — mills; and for — purposes, — mills.

For county purposes:

In Pulaski county, 28 mills.
In Faulkner county, 14 mills.
In Conway county, 14 mills.
In Pope county, 14 mills.
In Johnson county, 15½ mills.
In Franklin county, 14 mills.
In Crawford county, 15 mills.
In Sebastian county, 16 mills.

For municipal purposes:

In the city of Little Rock, 28½ mills.
In the city of Fort Smith and the towns in said counties, 5 mills.

The plaintiff avers that the several tax-books for each of said counties have been delivered to the said several respective defendant collectors for each of said counties, who are proceeding to collect the taxes based on the aforesaid illegal and arbitrary assessment

87 on the part of said railroad commissioners, and, unless restrained by the order of this court, said several collectors will

proceed to return the same to the county clerks of their respective counties as delinquent, and to sell said property for the collection of said taxes and the penalty imposed by law in cases of delinquency; that the plaintiff's right of way and railroad track outside of a strip of land one hundred feet wide, with the road-bed and all improvements, stations, and structures thereon required by law to be assessed, extending throughout its line of railroad from Argenta to Fort Smith, a distance of one hundred and sixty-five miles, and through the counties aforesaid; that the same is indivisible and incapable of separation, each and every part thereof being necessary and essential to the operation of its road, and that from the very nature of things a multiplicity of suits and controversies would necessarily arise should the said several collectors of said several counties sell so much and that part of said line of railroad as is located in each of said several counties, in regard to the right of the several purchasers under said sales, and also in regard to the rights of the plaintiff and of those claiming under the plaintiff as mortgage bondholders or otherwise in and to said railroad track and the right to operate said railroad notwithstanding said sales.

The premises considered, plaintiff prays that the defendants be temporarily restrained from returning said railroad track as delinquent, or further proceeding in the collection of said taxes, and upon the final hearing that they may be perpetually restrained and enjoined therefrom, and for such other and further relief
88 as plaintiff may be entitled to under the rules and practice in equity.

J. M. MOORE,
*For Plaintiff.*

H. Wood, being duly sworn, says he is the agent of the plaintiff, and that he believes the facts stated in the above complaint are true.

H. WOOD.

Subscribed and sworn to before me this 29th day of December, 1885.

[L. S.] G. W. SHINN,
*Notary Public.*

Endorsed: "Filed Dec. 29th, 1885. J. W. Calloway, clerk, by S. R. Brown, D. C."

EXHIBIT "A."

*Proceedings of Board of Railroad Commissioners, April 25th,* 1885.

OFFICE OF THE SECRETARY OF STATE,
LITTLE ROCK, *April 25th,* 1885.

Board of commissioners met pursuant to adjournment.

In conformity with the opinion rendered by the attorney general the following circular letter was issued by the board to each railroad company operating or being built in this State.

EXECUTIVE OFFICE,
LITTLE ROCK, *April 24th*, 1885.

89 At a meeting of the board of railroad commissioners for the State of Arkansas, held at the office of the secretary of state on Thursday, April 23rd, 1885, it was resolved by said board of railroad commissioners that all the property of railroad companies in this State should be assessed for taxation at its true value, as all other property is assessed, without regard to the restrictions and limitations in section 5649 of Mansfield's Digest, which provides "that the schedule of the property of said railroad companies shall not include embankments, tunnels, cuts, ties, trestles, or bridges." The board of commissioners, after full examination and consultation, have determined that such limitations and restrictions are unconstitutional, null, and void, and that they are not bound thereby. The several railroad companies are therefore requested to render full statements of all their property of whatever kind or description, and the true value thereof, in accordance with this determination, and without regard to the restrictions and limitations aforesaid, on or before the 11th day of May, 1885, at which time a full hearing will be accorded by the board to all who desire to be heard.

SIMON P. HUGHES, *Governor*,
A. W. FILES, *Auditor*,
E. B. MOORE, *Secretary of State*,
*Board of Railroad Commissioners for Arkansas.*

The board adjourned to meet again at 2 o'clock p. m, April 27th, 1885.

S. P. HUGHES, *Governor*.
A. W. FILES, *Auditor*.
E. B. MOORE, *Sec. of State*.

90 Attest: E. B. MOORE,
*Sec. Board of Railroad Commissioners.*

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, E. B. Moore, secretary of state of Arkansas, do hereby certify that the annexed pages contain a true, and complete, and full — proceedings had at a meeting of the board of railroad commissioners held April 25th, 1885, as appears by comparing the same with the original roll of said minutes of said board, now on file in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Little Rock, this — day of Feb., A. D. 1886.

[SEAL.] E. B. MOORE,
*Sec. of State.*

*Record, Order, Answer, and Demurrer of Defendant Filed, and Cause Submitted.*

LITTLE ROCK AND FORT SMITH RAILWAY
*v.*
R. W. WORTHEN, Collector, *et al.* } 2068.

FRIDAY, *January 22nd*, 1886.

Comes the defendants, by Hon. D. W. Jones, attorney general, and W. L. Terry, Esq., their solicitors, and file their answer and demurrer to the complaint herein, and, after argument of counsel heard, this cause is submitted to the court, on the whole case, by agreement of counsel.

91 *Answer and Demurrer of Defendants.*

Pulaski Chancery Court.

LITTLE ROCK AND FORT SMITH RAILWAY, Plaintiff,

*v.*

R. W. WORTHEN, as Collector of Pulaski County; A. J. WITT, as Collector of Faulkner County; R. H. Speer, as Collector of Conway County; J. H. Quinn, as Collector of Pope County; W. S. Jett, as Collector of Johnson County; J. T. Tolleson, as Collector of Franklin County; Wm. L. Taylor, as Collector of Crawford County; John T. Williams, as Collector of Sebastian County, Defendants.

The said defendants, for answer to so much and such parts of the said plaintiff's complaint herein as they are advised it is material and necessary for them to answer, admit the corporate existence of the plaintiff as stated in said complaint, and that all of its said property located on its right of way in said counties was assessed for taxation by the board of railroad commissioners for this State in accordance with the provisions of the act of March 31st, 1883, regulating and providing for the collection of the revenues of this State, and that said board, in estimating the value of the "railroad track" of plaintiff, as defined in said act, disregarded that part of
92 section 46 of said act which attempts to exempt from assessment and taxation embankments, tunnels, cuts, ties, trestles, and bridges of railroad corporations or companies; but they deny that said board in ascertaining and fixing the valuation of plaintiff's railroad track for taxation ascertained and fixed the value of its embankments, cuts, ties, trestles, and bridges separate and apart from the other property composing such "railroad track" or according to the cost of construction of such embankments, cuts, ties, trestles, and bridges; and they aver the truth to be that said board in the discharge of its said duty assessed all of the real property of plaintiff coming within the definition of "railroad track," and including embankments, cuts, ties, trestles, and bridges, at its value and all of the personal or movable property of plaintiff coming within the definition of "rolling-stock" at its value; that such assessment was not excessive or above the value of such property, and that said

board fully and in every particular complied with its duty under the constitution and laws of this State in making such assessment, and they deny each and every allegation of plaintiff's said complaint to the contrary.

And the defendants demur to said complaint because they say that it does not state facts sufficient to constitute a cause of action. Wherefore defendants pray that said complaint be dismissed, and for judgment and for costs and other relief.

DAN. W. JONES,
*Att'y General, &*
W. L. TERRY,
*For Defendants.*

STATE OF ARKANSAS, *County of Pulaski:*

93 R. W. Worthen, being sworn, says on oath that the statements in the foregoing answer are true to the best of my knowledge and belief.

ROBT. W. WORTHEN.

Subscribed and sworn to before me on this Jan. 22nd, 1886.
J. W. CALLOWAY, *Clerk,*
By S. R. BROWN, *D. C.*

Endorsed: "Filed in open court January 22nd, 1886. J. W. Calloway, clerk."

*Record Order. Return by Plaintiff to Board of Railroad Commissioners for Assessment, and Assessment by Board of Commissioners for Taxes, &c. Filed Tuesday, February 2nd, 1886.*

LITTLE ROCK AND FORT SMITH RAILROAD *v.* R. W. WORTHEN *et al.*

Come the parties, by their respective solicitors, and the plaintiff files herein a copy of the return made by the plaintiff to the State board of railroad commissioners of its railroad track for assessment for the year 1885; also a certified copy of the assessment made by said commissioners of said property for said year, and by consent it is agreed that the same shall be made a part of the record and read in evidence at the hearing of said cause.

And it appearing to the court that this order was filed on
94 the 30th day of January, 1886, and by omission of the clerk not entered of record as should have been done, it is now ordered that the same be entered *nunc pro tunc* as of said 30th day of January, 1886, now for then.

(The following two papers are the records referred to in the above:)

*A Copy of the Return Made by the L. R. & Ft. S. R'y of its Railroad Track to the Board of Railroad Commissioners for Assessment for the Year* 1885.

Little Rock and Fort Smith R'y Taxes.

Pulaski county—length, 16.15 miles:

| | |
|---|---|
| Main line | $28,262 50 |
| Sidings | 3,312 50 |
| Buildings | 7,000 00 |
| | $38,575 00 @ 28 mills. |

Faulkner county—length, 19.92 miles:

| | |
|---|---|
| Main line | $34,860 00 |
| Sidings | 1,712 50 |
| Buildings | 2,100 00 |
| | $38,672 50 @ 14 m. |

Conway county—length, 22.14 miles:

| | |
|---|---|
| Main line | $38,745 00 |
| Sidings | 2,600 00 |
| Buildings | 2,700 00 |
| | 44,045 @ 14 m. |

95 Pope county:

| | |
|---|---|
| Main line | $28,212 50 |
| Sidings | 2,800 00 |
| Buildings | 4,500 00 |
| | $35,512 00 @ 14 m. |

Johnson county—length, 31.44 miles:

| | |
|---|---|
| Main line | $55,020 00 |
| Sidings | 3,225 00 |
| Buildings | 3,550 00 |
| | $61,795 00 @ 15½ mills. |

Franklin county—length, 24.37 miles:

| | |
|---|---|
| Main line | $42,647 50 |
| Sidings | 1,275 00 |
| Buildings | 2,900 00 |
| | $46,822 50 @ 14 m. |

Crawford county—length, 18.21 miles:

| | |
|---|---|
| Main line | $31,867 50 |
| Sidings | 887 50 |
| Buildings | 2,100 00 |
| | $34,855 00 @ 15 m. |

Sebastian county—length, 5.22 miles:

| | |
|---|---|
| Main line | $9,137 00 |
| Sidings | 725 00 |
| Buildings | 1,750 00 |
| | $11,610 00 @ 16 mills. |

96 Endorsed: Filed in open court Jan. 30th, 1886. J. W. Calloway, clerk.

*Assessment of Board of Railroad Commissioners.*

OFFICE SECRETARY OF STATE,
LITTLE ROCK, *May 11th*, 1885.

The Little Rock and Fort Smith railroad was appraised as follows:

Pulaski county:

| | |
|---|---|
| Length of main line, 16.15 miles | $58,947 50 |
| " of side track, 2.65 m. | 3,312 50 |
| Buildings and improvements | 7,000 00 |
| Total | $69,260 00 |

Faulkner county:

| | |
|---|---|
| Length of main line, 19.92 m. | $72,708 00 |
| " " side track, 1.37 m. | 1,712 50 |
| Buildings and improvements | 2,100 00 |
| Total | $76,520 50 |

Conway county:

| | |
|---|---|
| Length of main line, 22.14 m. | $80,811 00 |
| " " side track, 2.08 m. | 2,600 00 |
| Buildings and improvements | 2,700 00 |
| Total | $86,111 00 |

97 Pope county:

| | |
|---|---|
| Length of main line, 27.55 m. | $100,557 50 |
| " " side tracks, 2.24 m. | 2,800 00 |
| Buildings and improvements | 4,500 00 |
| Total | $107,857 50 |

Johnson county:

| | |
|---|---|
| Length of main line, 31.44 m. | $114,756 00 |
| " " side track, 2.58 m. | 3,225 00 |
| Buildings and improvements | 3,550 00 |
| Total | $121,531 00 |

| | |
|---|---|
| Franklin county: | |
| Length of main line, 24.37 m. | $88,950 50 |
| " " W. side track, 1.02 m. | 1,275 00 |
| Buildings and improvements | 2,900 00 |
| Total | 93,125 50 |
| Crawford county: | |
| Length of main line, 18.21 m. | $66,466 50 |
| " " side track, .71 m. | 887 50 |
| Buildings and improvements | 2,100 00 |
| Total | $69,454 00 |
| Sebastian county: | |
| Length of main line, 5.22 m. | $19,053 00 |
| " " side track, .58 m. | 725 00 |
| Buildings and improvements | 1,750 00 |
| Total | $21,528 00 |

*Certificate of Secretary of State.*

STATE OF ARKANSAS, *Little Rock, Arkansas:*

I, E. B. Moore, secretary of state of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of the record of the appraised valuation of the Little Rock and Fort Smith railway tracks and buildings made by the board of railroad commissioners of Arkansas for the year 1884 at a meeting of said board held in Little Rock May 11th to 16th, 1885, as appears by comparing the same with the original record of said appraisements now on file in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Little Rock, this 12th day of January, A. D. 1886.

E. B. MOORE,
*Secretary of State.*

Endorsed: "Filed in open court January 30th, 1886. J. W. Calloway, clerk."

99 *Record, Order, Final Decree, and Appeal by Plaintiff.*

LITTLE ROCK AND FORT SMITH RAILROAD

*v.*

R. W. WORTHEN *et al.*

TUESDAY, *February 2nd*, 1886.

Come the parties, the plaintiff by J. M. Moore, its solicitor, and the defendants by the attorney general and W. L. Terry, their solicitors, and thereupon said cause is submitted as on final hearing by

consent, on the complaint, and answer, the demurrer to the complaint, the exhibit filed with the complaint, and the records filed by consent in this cause; and the court, having heard argument of counsel, and being well and sufficiently advised in the premises, is of the opinion that there is no equity in the complaint; that the plaintiff is not entitled to the relief prayed; and it is therefore ordered, adjudged, and decreed that the complaint is dismissed, and that the plaintiff pay all the costs in this cause expended. And thereupon plaintiff excepted to the ruling and order of the court, and prayed an appeal to the Supreme Court, which is by the court granted.

STATE OF ARKANSAS, *County of Pulaski:*

I, J. W. Calloway, clerk of the Pulaski chancery court, do hereby certify that the annexed and foregoing 45 pages contain a true and compared transcript of all the record and proceedings of the Pulaski chancery court made and had in the foregoing entitled cause as appears of record and on file in my office.

100 In testimony whereof I hereunto set my hand and affixed the seal of said court, at my office in Little Rock, Ark., on this 17th day of April, 1886.

[SEAL.] J. W. CALLOWAY, *Clerk.*
By S. R. BROWN, *D. C.*

101 Which Exhibit B to plea is as follows:

STATE OF ARKANSAS, *set:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house in the city of Little Rock on the 23rd day, being the fourth Monday, of November, A. D. 1885, amongst others, were the following proceedings on the 27th day of March, A. D. 1886, a day of said term:

*Appeal from Pulaski Chancery Court.*

LITTLE ROCK AND FORT SMITH RAILWAY COMPANY, Appellant,
*v.*
R. W. WORTHEN, as Collector, *et al.*, Appellee.

This cause came on to be heard upon the transcript of the record of the Pulaski chancery court, and was argued by the solicitors of the parties; on consideration whereof, it is the opinion of the court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed that the decree of said chancery court in this cause be, and the same is hereby, in all things affirmed, with costs.

It is further ordered and decreed that said appellees recover of said appellant all their costs in this court in this cause expended, and have execution therefor, as upon judgment at law.

102 In testimony that the above is a true copy of the decree of said supreme court in the cause therein, I, Luke E. Barber, clerk of said supreme court, hereto set my hand and affix the seal of said court, at my office, in the city of Little Rock, this 16th day of April, A. D. 1886.

[L. S.] L. E. BARBER, *Clerk.*

STATE OF ARKANSAS, *set:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held on the 23rd day, being the fourth Monday in November, A. D. 1885, at the court-house in the city of Little Rock, the following opinion was delivered by the court on the 27th day of March, A. D. 1886, a day of said term, in the case of Little Rock and Fort Smith Railway Company, appellants, *v.* R. W. Worthen, as collector of Pulaski county; A. J. Witt, as collector of Faulkner Co.; R. H. Speer, as collector of Conway Co.;
103 J. H. Quinn, as collector of Pope Co.; W. S. Jett, as collector of Johnson Co.; J. Tolleson, as collector of Franklin Co.; M. L. Taylor, as collector of Crawford Co.; J. T. Williams, as collector of Sebastian county, appellees—appeal from Pulaski chancery court.

This suit was brought by appellant to enjoin the collection of the taxes for the year 1885, assessed upon its "railroad track" in the several counties through which said railway runs, upon the alleged ground that the board of railroad commissioners exceeded its powers in requiring the railway company to include in the schedule required to be filed by it a list and valuation of the "embankments, tunnels, cuts, ties, trestles, and bridges," and in considering said "embankments," etc., as elements of value in making the assessment of said "railroad track." Appellant insists that this action upon the part of said board rendered the assessment void.

Appellees answered, admitting the assessment of said "railroad track" in accordance with the provisions of the revenue act of March 31st, 1883, but denying that said board of railroad commissioners assessed or valued the "embankments, tunnels, cuts, ties, trestles, and bridges" upon appellant's right of way separately and apart from the other real estate constituting said "railroad track," or according to the cost of constructing the same, but alleging that the value of said "embankments," etc., was considered in connection with the other property constituting said "railroad track;" admitted that said board disregarded that part of said revenue act
104 which attempts to exempt from assessment and taxation the "embankments, tunnels, cuts, ties, trestles, and bridges" of appellant as being unconstitutional, and assessed said "railroad track" at its true value, and that such assessment was not excessive. Appellees also demurred to appellant's complaint upon the ground that it does not state facts sufficient to cause a cause of action. This cause was heard by the chancellor upon the complaint, answer, and

demurrer and exhibits; the relief was denied, the bill dismissed, and the railway appealed.

No question is presented as to the power of the Legislature to provide for the manner of ascertaining the value of this species of property, but it is conceded that full power is granted by the Constitution for the establishment of the board of railroad commissioners and for the separate classification of railroad property for the purposes of taxation, and it was manifestly the intention of the Legislature that this board should have the sole power of assessing all railroad property in this State which is situated on the right of way.

The taxes upon the rolling-stock of the railway company are not in litigation. That was assessed as personal property by the same board of railroad commissioners, under sections 5651 and 5653 of Mansfield's Digest, and the taxes have been paid.

Section 5647 provides that "the Governor, secretary of state, and auditor of public accounts shall be, and are hereby constituted, a board of railroad commissioners for this State, and on the first Monday in April in each year shall proceed to ascertain the value of all property, including railroad track, rolling-stock, water and
105 wood stations, passenger and freight depots, offices, furniture, and such other property, real and personal, as is owned by each of the railroads or railways of each company or corporation having existence under the laws of this State or incorporated in whole or in part therein, and running through or in this State in the manner as hereinafter prescribed."

SEC. 5649. "They" (the railroad companies) "shall, in the month of March, in the year 1883, and at the same time every second year thereafter, when required, make out and file with the secretary of State a statement or schedule showing the main and all side tracks, switches, and turnouts in each county in which the railroad may be located and in each city and town in said county through or into which the road may run. They shall also state the value of all improvements, stations, and structures, including the railroad track located on the right of way, *but such schedule shall not include nor value embankments, tunnels, cuts, ties, trestles or bridges.*"

Section 5650 is as follows: "Such railroad, as described and scheduled in the last preceding section, shall be held to be real estate for the purposes of taxation and denominated 'railroad track,' and shall be so listed and valued, and shall be described in the assessment thereof as the railroad track of the — railroad company in the county, city, or town, and such description shall be considered as embracing all the property required to be assessed by section 5649, and when advertised and sold for taxes no other description shall be necessary."

Section 5652 is as follows: "The board of railroad commissioners shall meet on the first Monday in April, in the year 1883,
106 and at the same time in each year thereafter, at the office of the secretary of state for the State of Arkansas, and, after being duly sworn to fearlessly, impartially, and honestly discharge their duties, shall proceed to examine the lists or schedules of the description and value of the railroad track of the railroad compa-

nies filed with the secretary of state in accordance with the requirements of this act, and if said schedules are made out in accordance with the provisions of this act and, in the opinion of the board, the valuation of said railroad track is fair and reasonable, said board shall appraise the same, and it shall be the duty of the secretary of state to certify to the assessor of each county in which such railroad is located so much of said list as values such railroad track as is located in such county, and in any city or town of such county, and such assessor shall list and assess the same as real estate by the description as hereinbefore specified."

These are the principal provisions of the revenue act so far as they affect this case. The whole controversy has arisen upon the meaning, effect, and constitutionality of the italicised clause of sec. 5649. The railway company made a return of the length of its main line and side tracks and of the value thereof, and of the structures on its right of way, not taking into account embankments, tunnels, cuts, cross-ties, trestles, or bridges. The board determined that all railroad property in the State should be assessed at its true value like any other property, without any deduction on account of embankments, etc. The several railroad companies were notified and requested to render statements of the true value of their
107 respective lines without regard to the restrictions contained in sec. 5649, and were accorded a full hearing. Acting upon the advice of the attorney general of the State, that said clause was unconstitutional and that they were not bound by it, they proceeded to assess the appellant's railway at a sum nearly double what it had returned. It is not complained that this valuation was excessive, but the contention is—

First. That the board had no power to construe the constitutionality of any part of the act, but must take it and act under it as it reads, without regard to the question of any part of it being in violation of the constitution.

Second. That it is in the power of the Legislature, in providing for the manner of valuing railroad property, to determine what elements shall be taken into consideration as constituting such value, and that it was competent for that body to exclude the "embankments, tunnels, cuts, ties, trestles, and bridges" from the schedule to be filed, as not constituting elements of value, and that, therefore, such exclusion in section 5649, *supra*, is constitutional.

Third. That the board of railroad commissioners is created and its powers prescribed and limited by the statute, and that, consequently, it exceeded its powers in considering the value of "embankments, tunnels, cuts, ties, trestles, and bridges" when valuing the "railroad track" of appellant; that there is no manner provided by law for assessing "embankments, tunnels, cuts, ties, trestles, and bridges," and consequently the same cannot be taxed.

The meaning of the clause in question is not self-evident. If the Legislature intended to enact that the railroad embankments, tunnels, etc., should not be separately assessed, then the board
108 has not attempted to do this, for the pleadings show that the constituents of value which enter into railroad property have

not been assessed in separate items or parcels, but *in solido*. The whole line, considered as a thoroughfare and means of transportation, has been valued as a unit. If, on the other hand, the Legislature meant to relieve any portion of the property belonging to railroad corporations from the duty of contributing to the rightful demands of the State, in the exercise of its powers of taxation, they have undertaken to do something which is quite beyond their power.

Now, officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the Constitution. Their primary allegiance is due to the Constitution, and if there be a conflict between the two the Constitution is the higher law, or rather the supposed law is not a law at all, being null and void. They do, indeed, incur peril by deciding for themselves in advance of the courts the unconstitutionality of an enactment. But they are also liable to be punished in damages if they carry into effect an act which violates the fundamental law. Rison *v.* Farr, 24 Ark., 161, affords an illustration.

The constitution of 1864 prescribed the qualifications of voters. The Legislature attempted to add to these qualifications by directing that the voter, before depositing his ballot, should make oath that he had not since the 18th of April, 1864, voluntarily borne arms against the United States, nor aided the Confederate authorities.

Farr possessed the constitutional qualifications, but refused to
109 take the oath. The judges of election would not allow him to vote, and he recovered a judgment against them, which was affirmed by this court.

Judge Cooley, in his work on Constitutional Limitations, at page 74, says: "Whoever derives power from the Constitution to perform any public function is disloyal to that instrument and grossly derelict in duty if he does that which he is not reasonably satisfied the Constitution permits. Whether the power be legislative, executive, or judicial, there is manifest disregard of constitutional and moral obligations by one who, having taken an oath to observe that instrument takes part in an action which he cannot say he believes to be no violation of its provisions."

Article XVI of the constitution of 1874 contains the following provisions:

"SEC. 5. All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State; no one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value.

"SEC. 6. All laws exempting property from taxation, other than as provided by this constitution, shall be void.

"SEC. 7. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State may be a party."

The tunnels, tracks, substructures, superstructures, viaducts, and masonry of a railroad are property—the private property—of the stockholders. There must have been an interest in the land to

justify the erection or affixing of these structures in the first
110 instance and the exclusive possession and use of them afterwards by the company. They are, in fact, part and parcel of the railroad. The company controls the improvements and it is only by lease or other arrangement that the trains of other companies are permitted to run over it. Now, it can make no difference in respect to taxation, whether the rails are laid upon the surface of the road or placed on pillars, or carried through a covered way or tunnel.

Smith *v.* Mayor, 68 N. Y., 552.
People *ex rel. v.* Commissioners of Taxes, 82 *Ib.*, 459.
Same [*v.*] Same, 3 Eastern Reporter, 569 (N. Y. c't appeals, Jan., 1886).

All railroads are declared by the constitution (Art. XVII, sec. 1) to be public highways, but the public are entitled to use them only upon the condition of paying tolls.

The theory of our Constitution is that the common burden shall be borne by common contributions. All property is to be taxed according to its value. "All" does not mean all that the Legislature may designate, or all except such as the Legislature may exempt. If this were so the whole burden of taxation might be thrown upon land, or upon any one species of property. It means all private property of every description, *of* all property other than that belonging to the State or the General Government.

The Legislature cannot discriminate between different classes of property in the imposition of taxes. The only discretion with which it is invested is in the ascertainment of values, so as to make the same equal and uniform throughout the State.

People *v.* McCreery, 34 Cal., 432.
Same *v.* Effy, 43 *Ib.*, 331.
111 C. & O. R'y *v.* Miller, 19 W. Va., 408.
Zanesville *v.* Richards, 5 Ohio St., 589.
Baker *v.* Cincinnati, 11 *Id.*, 541.
Hunsaker *v.* Wright, 30 Ill., 146.
Ellis *v.* L. & N. R'y Co., 8 Jere. Baxter, 530.
Fletcher *v.* Oliver, 25 Ark., 289.

But it is further contended that as the whole authority of the board in the premises is derived from the revenue act, and as the act makes no provision for the assessment of "embankments, tunnels, cuts, ties, trestles, and bridges," therefore the same cannot be taxed. The argument, if limited to the separate assessment and taxation of these things is good; but if it is meant that these necessary parts of every railroad are not to be considered in the estimation of the value of the whole line, the argument assumes two propositions—first, that the revenue act upon the subject of assessing and taxing railroad corporations must be taken as it was passedby the Legislature as an entirety, and is either all good or all bad; if all good, then the "embankments," etc., are not subject to taxation, because expressly excluded, and if all bad, then the Legislature has failed to direct the

manner in which the value of this species of property shall be ascertained; but in either case the board of railroad commissioners acted *ultra vires;* and, second, that the act merely regulates the assessment of railroad property, and that it is within the power and is the duty of the Legislature to prescribe the manner or mode in which all property shall be assessed for taxation, and that, unless the mode so prescribed is pursued, no valid levy of taxes can be made.

112 It does not follow that the attempted exemption of certain parts of railroad property avoids the whole revenue act. The exception, being void, must be stricken from the act, and the act read as if the provision had not been inserted.

People *v.* McCreery, *supra.*

When a statute is divisible and a portion of it is repugnant to the Constitution, so much of the statute is to be upheld as does not conflict with the Constitution, and the enactment sustained by rejecting the objectionable part.

Watkins, C. J., in Washington *v.* State, 13 Ark., 757.

Judge Cooley, in his Constitutional Limitations, at page 177, *et seq.*, lays down the rule in such cases to be as follows: "Where a part of a statute is unconstitutional that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the Legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section, for the distribution into sections is purely artificial, but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must

113 be sustained. The difficulty is in determining whether the good and bad parts of the statute are capable of being separated within the meaning of this rule. If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other."

This rule was applied by this court in the case of The State *v.* Marsh, 37 Ark., 356, to a section of the act of 1879 regulating the sale of liquors in this State. This court, through its late learned Chief Justice English, declared that it would not undertake to say that the Legislature would have passed the act without the section being just as it was enacted; but that, as passed, the section was in violation of the commerce clause of the Constitution of the United States, and for that reason void, and the section was re-formed by the court by striking out the obnoxious words, and, as thus re-formed, it was held to be valid, and is now the law of this State.

The clause of section 5649 under consideration may be stricken out without detriment to the remainder of the act and the consistency of its parts. It is useless and unnecessary in any view, and, construed as providing for an exemption, it is ineffectual and mischievous. Of the proposition that the act is a mere regulation for the assessment of railroad property, it is sufficient to say that this clause, if enforced, would prevent the taxation of such property according to its value.

An assessment is a prerequisite to a valid levy of taxes, and the Legislature cannot, under the guise of regulating the duties of assessors, exempt the property from taxation.

People *v.* Eddy, *supra.*

114 If a law should be passed directing county assessors, in assessing farm lands, not to include nor value ditches, drains, wells, fences, or other improvements, it would be their duty to go forward and assess the land at its real value, disregarding the directions.

The decree is affirmed.

In testimony that the foregoing fifteen pages contain a full, true, and complete copy of the opinion of the supreme court of the State of Arkansas in the case stated, I, Luke E. Barber, clerk of said court, hereto set my hand and affix the seal of said court, at office, in the city of Little Rock, this 16th day of April, A. D. 1886.

[L. S.] L. E. BARBER *Clerk.*

115 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit, on April 21st, 1886:

C. W. HUNTINGTON *et al.*, Trustees,
*v.*
R. W. WORTHEN *et al.*, Collectors. } 821.

Come the complainants, by J. M. Moore and C. W. Huntington, Esqs., their solicitors, and come the defendants, by Dan. W. Jones, Esq., attorney general of the State of Arkansas; and now the court, being well and sufficiently advised of the matters arising on the demurrer to the bill, considers that the same be sustained.

It is therefore ordered, considered, and decreed that the bill of complaint herein be, and the same is hereby, dismissed at the cost of complainants. Thereupon the complainants pray an appeal to the Supreme Court; and it appearing that the sum in controversy, exclusive of cost, exceeds five thousand dollars, it is accordingly ordered that an appeal be, and the same is hereby, granted as prayed.

116 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this third (3rd) day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and eleventh.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: [Stamped:] Supreme Court U. S. Received Sep. 18, 1886. Clerk's office. E. Arkansas C. C. U. S. No. 1078. C. W. Huntington and George Ripley, trustees, appellants, *vs.* R. W. Worthen, as collector of Pulaski county, *et al.* Filed October 6, 1886.

120-97

# Supreme Court of the United States.

No. 1077.

THE LITTLE ROCK AND FORT SMITH RAILWAY,

PLAINTIFF IN ERROR,

*v.*

R. W. WORTHEN ET ALS., Collectors.

And No. 1078.

C. W. Huntington and George Ripley, Trustees,

APPELLANTS,

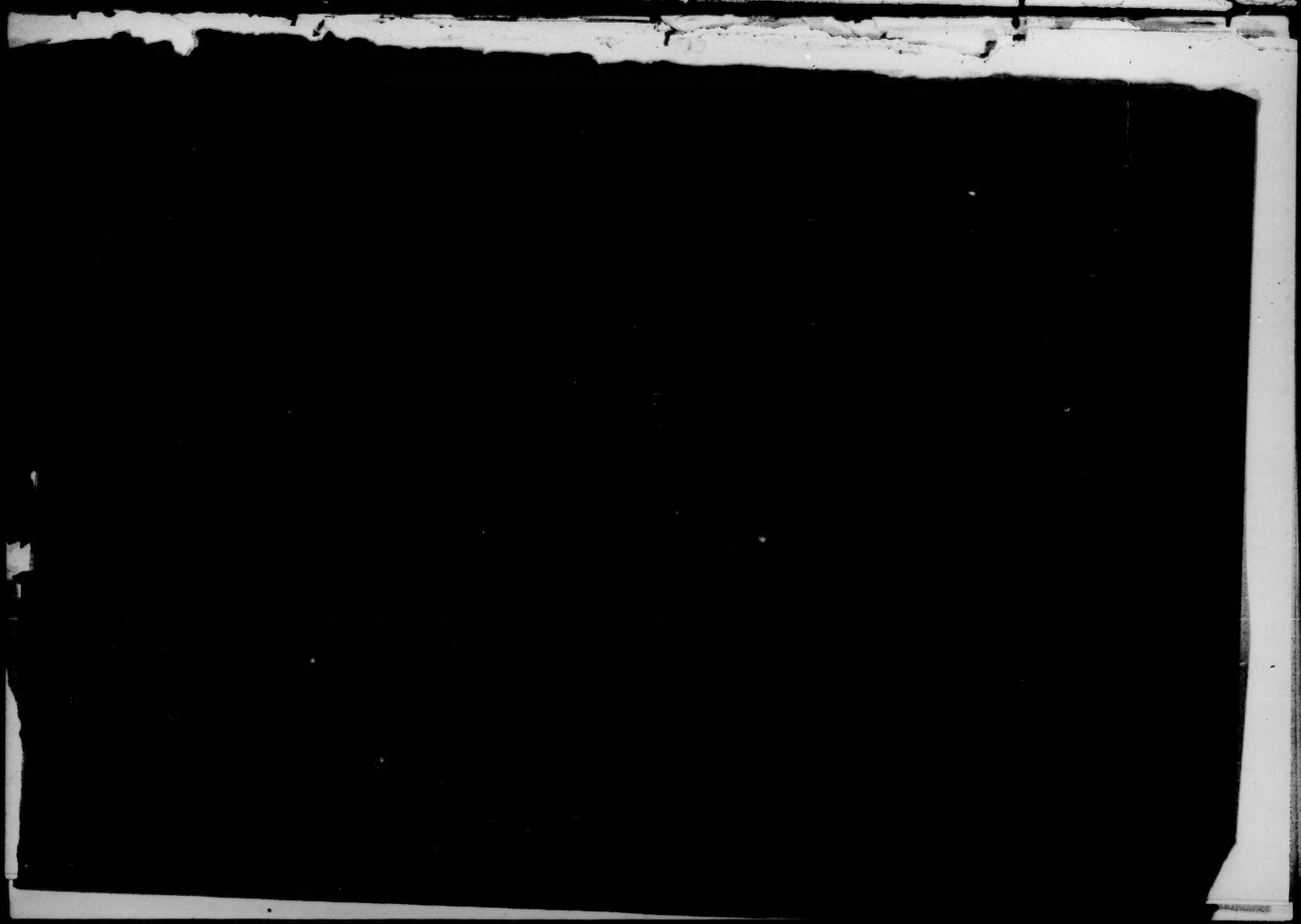
*v.*

SAME.

**Brief and Argument for Plaintiff in Error and Appellants.**

C. W. HUNTINGTON, *of Counsel.*

BOSTON:
GEO. H. ELLIS, PRINTER, 141 FRANKLIN STREET.
1887.



# Supreme Court of the United States.

No. 1077.

THE LITTLE ROCK AND FORT SMITH RAILWAY,

PLAINTIFF IN ERROR,

*v.*

R. W. WORTHEN ET ALS., Collectors.

And No. 1078.

C. W. Huntington and George Ripley, Trustees,

APPELLANTS,

*v.*

SAME.

**Brief and Argument for Plaintiff in Error and Appellants.**

C. W. HUNTINGTON, *of Counsel.*

BOSTON:
GEO. H. ELLIS, PRINTER, 141 FRANKLIN STREET.
1887.

# Supreme Court of the United States.

**OCTOBER TERM, 1886.**

---

No. 1077.

THE LITTLE ROCK AND FORT SMITH RAILWAY, PLAINTIFF IN ERROR,

*vs.*

R. W. WORTHEN, AS COLLECTOR OF PULASKI COUNTY, ET ALS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

And No. 1078.

C. W. HUNTINGTON AND GEORGE RIPLEY, TRUSTEES, APPELLANTS,

*vs.*

R. W. WORTHEN, AS COLLECTOR OF PULASKI COUNTY, ET ALS.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

---

The first of the above-entitled suits was originally brought in the Pulaski Chancery Court of the State of Arkansas, in December, 1885, by the Little Rock and Fort Smith Railway, a corporation owning and operating a line of railway of about one hundred and sixty-five miles in length, lying wholly within the State of Arkansas, to restrain the several defendants, as collectors of taxes in the several counties upon the line of said railway, from collecting the taxes assessed and levied upon what is denominated in the Revenue Act of said State as the "railroad track" of the plaintiff corporation for the year 1885.

The Pulaski Chancery Court, upon final hearing, decided that the plaintiff was not entitled to the relief sought, and ordered that the bill of complaint be dismissed. Whereupon, the plaintiff corporation prayed an appeal, which was granted, to the Supreme Court of the State.

This latter court, on the twenty-seventh day of March, 1886, decided that there was no error in the proceedings and decree of said Chancery Court, and ordered that said decree be, in all things, affirmed, with costs.

As soon as was practicable thereafter,—to wit, April 9, 1886,—the appellants in the second of the above-entitled suits, who are citizens of Massachusetts, and who are also the trustees under a first and only mortgage executed by said Little Rock and Fort Smith Railway upon its railroad and land grant, filed their bill of complaint against the same several collectors of taxes as in the previous suit, to restrain the collection of the same taxes for the same year. Subsequently, the bill was amended by joining the county clerks of the several counties on the line of said railway as defendants with prayers for injunctions restraining them from doing the several acts and things which the Revenue Act requires them to do and perform in connection with and subsequently to the sale of the "railroad track" for the non-payment of taxes. This suit came on for final hearing April 21, 1886; and the bill was ordered to be dismissed by the presiding circuit judge, who gave no written opinion, but who based his decision on the ground that, inasmuch as the highest court of the State had, in the former suit, given a construction to its own Constitution and statute laws, the Federal court was bound by such construction, and that no Federal question was involved in either suit.

The issues presented in both these suits are, so far as the Federal questions are involved, precisely the same. No fact whatever is in dispute; for all essential facts are matters of record, form a part of the bills of complaint in each suit, and their truth is admitted in the answers and demurrers.

It has therefore been agreed by counsel that, with the consent of this Court, the two suits may be argued together.

## STATEMENT.

The foundation of the bill of complaint in each suit rests upon the acts and doings of the Board of Railroad Commissioners of the State in connection with the valuation and appraisal of what is denominated in the Revenue Act as the "railroad track" of the plaintiff corporation, and in connection with the express provisions of the statutes relating thereto.

It will save both time and space if we here insert in full the provisions of the Revenue Act relating to the taxation of railroads so far as they are applicable to these suits, with such comments as to the construction thereof as may seem pertinent. The entire Act will be found in the Appendix to this brief. It is entitled "An Act

to Revise and Amend the Revenue Laws of Arkansas," and was approved March 31, 1883. The sections now quoted are Section 44 to Section 51, both inclusive (Mansfield's Digest, Sections 5647 to 5654); and they are substantially set forth in the bills of complaint: —

"SEC. 44. The Governor, Secretary of State and Auditor of Public Accounts shall be and are hereby constituted a Board of Railroad Commissioners for this State. And on the first Monday in April in each year shall proceed to ascertain the value of all property, including railroad track, rolling-stock, water and wood stations, passenger and freight depots, offices, furniture and such other property, real and personal, as is owned by each of the railroads or railways of each company or corporation having existence under the laws of this State, or incorporated in whole or in part therein, and running through, or in this State in the manner as hereinafter prescribed."

The office of railroad commissioner is not an office recognized by the present constitution of the State, but is wholly a creation of the legislature.

"SEC. 45. Every person, company or corporation owning or operating a railroad in this State shall return sworn lists or schedules of the taxable property of such railroads as hereinafter provided. Such property shall be listed and assessed with reference to its amount, kind and value, on the first Monday in March of the year in which it is listed."

Then follows the section providing how or in what manner the lists or schedules required by the above section shall be prepared and made: —

"SEC. 46. They shall in the month of March, in the year 1883, and at the same time every second year thereafter, when required, make out and file with the Secretary of State, a statement or schedule showing the length of the main and all side tracks, switches and turn outs in each county in which the railroad may be located, and in each city and town in said county through or into which the road may run. They shall also state the value of all improvements, stations and structures including the railroad track

located on the right of way; but such schedule shall not include nor value embankments, tunnels, cuts, ties, trestles or bridges. New companies shall make and file such schedule in March next after the location of their road. When such schedule shall have been once made it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the Board of Railroad Commissioners. But such companies shall annually during the month of March report the value of such property by the description set forth in the following section of this Act, and note all additions and changes as shall have occurred in such right of way.

"SEC. 47. Such railroad as described and scheduled in the last preceding section shall be held to be real estate for the purpose of taxation, and denominated 'railroad track,' and shall be so listed and valued, and shall be described in the assessment thereof as the railroad track of the —— —— railroad company in the county, city or town, and such description shall be considered as embracing all the property required to be assessed by section forty-six (46), and when advertised and sold for taxes no other description shall be necessary."

In these two sections, we have a clear and explicit definition and declaration, not only of what the first list or schedule which railroad companies are required to make out and file, with the Secretary of State, shall be called,— namely, "railroad track,"— but of the precise properties which shall be included in such lists or schedules, and which shall be valued by the companies in the first instance, and subsequently assessed by the Railroad Commissioners. The companies and the *Railroad Commissioners*, both, are *in express terms* forbidden to include and value in such schedules "embankments, tunnels, cuts, ties, trestles or bridges."

The manifest intent and object of the legislature was to put every railroad in the State as nearly on an equality with each other as is practicable, so far as relates to the valuation of the track itself, pure and simple, and not to compel one road to pay higher taxes than another road, because of the enhanced cost of construction and maintenance by reason of deep cuts, high embankments, and long and expensive tunnels, trestles, or bridges.

Another list or schedule which railroad companies are required to make out and file is defined in the following section: —

"SEC. 48. The movable property belonging to a railroad com-

pany shall be held to be personal property, and denominated for purposes of taxation, 'rolling stock.'

"Every person, company or corporation owning, constructing or operating a railroad in this State shall, in the month of March annually, make and file with the Secretary of State, a list or schedule which shall contain a correct detailed inventory of all the rolling stock belonging to such company, together with the true valuation thereof, and which shall distinctly state and set forth the number of locomotives of all classes, passenger cars, dining cars, express cars, coal cars, pay cars, constructing and working cars, caboose cars, hand cars, cattle cars and all other kinds of cars belonging to such road and also all locomotives and cars not belonging to such company, but hired for its use for a term of not less than six months, it not being intended to tax locomotives or cars temporarily coming into or passing through this State, but only to tax such as are actually owned or leased by the companies in the State. Said schedule shall set forth the number of miles of track on which said rolling stock is used in this State, and the number of miles of track upon which said rolling stock is used in other States."

There is no controversy over the taxes upon rolling stock. They have been duly assessed, levied, and paid.

Thus far the railroad companies alone have been required to act. We now come to the section prescribing the powers, duties, and functions of the Railroad Commissioners.

"SEC. 49. The Board of Railroad Commissioners shall meet on the first (1st) Monday in April, in the year eighteen hundred and eighty-three (1883), and at the same time in each year thereafter, at the office of the Secretary of State for the State of Arkansas, and after being duly sworn to fearlessly, impartially and honestly discharge their duties shall proceed to examine the lists or schedules of the description and value of the railroad track of the railroad companies filed with the Secretary of State in accordance with the requirements of this Act, and if said schedules are made out in accordance with the provisions of this Act, and in the opinion of the board the valuation of said railroad track is fair and reasonable said board shall appraise the same, and it shall be the duty of the Secretary of State to certify to the assessor of each county in which such railroad is located, so much of said list as values such railroad track as is located in such county, and in any city or town of such county, and such assessor shall list and assess the same as real estate, by the description, as hereinbefore specified."

That is, as specified in Section 47, it shall be "denominated 'railroad track,' and shall be so listed and valued, and shall be described in the assessment thereof as the railroad track of the —— —— railroad company in the county, city or town," etc. The assessment, of course, is based on the valuations made by the Railroad Commissioners.

We do not claim that under Section 49 the Railroad Commissioners are bound by the valuations made by the railroad companies of the "railroad track," and that they have no power to increase those valuations; but what we do claim is that under this section, and Sections 45, 46, and 47, the power and jurisdiction of the commissioners is limited and confined to lists or schedules which "are made out in accordance with the provisions of this Act," — that is to say, to lists or schedules which do "not include nor value embankments, tunnels, cuts, ties, trestles or bridges." And, further, that, when a railroad company has in good faith filed such list or schedule within the prescribed time, the Railroad Commissioners have not only no power, jurisdiction, nor authority to demand that any other or additional lists or schedules be furnished, but that they are expressly inhibited from so doing.

"SEC. 50. Said board for the purpose of finding the value of the rolling stock of railroad companies in this State, shall take the total value as stated in the list and schedule of the rolling stock of each of the respective railroads of this State, filed in accordance with the requirements of this Act, and divide the same by the number of miles in the entire length of such railroad, and the result shall be the value per mile of such railroad for the purpose of taxation, and the value per mile of any such railroad so ascertained, shall be multiplied by the number of miles, or fraction of miles, thereof lying and being in any county, and the product thereof is the sum to be taxed in such county.

"And it shall be the duty of the Secretary of State to certify to the assessor of the respective counties in which said sums are to be taxed, the amount to be taxed in their respective counties, and such assessors shall list and assess the same as personal property, designating the same as 'rolling stock of —— —— railroad company.'"

As before stated, there is no controversy over this latter class of taxes, and they have all been duly paid.

"SEC. 51. All other personal property belonging to any rail-

road company, except rolling stock, shall be listed and assessed in the county wherever the same may be, on the first day of March in each year; all other real estate, including the buildings and structures thereon, other than that denominated railroad track, belonging to any railroad company in this State, shall be listed and assessed by the assessor of the county in which they are situated at the same time, and in like manner as real estate belonging to individuals is by this Act required to be listed and assessed."

The succeeding sections of the Act relating to the taxation of railroads have no application to these suits.

The bills of complaint in each suit allege that the "railroad track" of railroad companies in said State was valued, and the taxes thereon assessed, levied, and collected for the years 1883 and 1884, in the latter year by the same Board of Railroad Commissioners who made the valuations in 1885, in strict conformity with the provisions of said Act as above set forth; that in the month of March, 1885, the plaintiff corporation filed with the Secretary of State of Arkansas a sworn list or schedule of its "railroad track," as required by said Sections 45, 46, and 47, which said list or schedule did not include nor value embankments, tunnels, cuts, ties, trestles, nor bridges, a copy of which said list or schedule is annexed to and made a part of said bills of complaint; that the Board of Railroad Commissioners subsequently met at the time and place prescribed by law, and proceeded to examine, and did examine, the aforesaid lists or schedules of the description or value of the "railroad track" so as aforesaid filed by the plaintiff corporation, but that before proceeding to appraise the same said Board of Railroad Commissioners, on or about the twenty-fourth day of April, 1885, made, issued, and caused to be served upon said plaintiff corporation the following order or notice, to wit: —

"EXECUTIVE OFFICE, LITTLE ROCK, April 24, 1885.

"At a meeting of the Board of Railroad Commissioners for the State of Arkansas, held at the office of the Secretary of State, on Thursday, April 23, 1885, it was resolved by said Board of Railroad Commissioners that all the property of railroad companies in this State should be assessed without regard to the restrictions and limitations in Section 5649 of Mansfield's Digest,* which provides that the schedules of the property of said railroad companies shall not include embankments, tunnels, cuts, ties, trestles, or bridges. The

* Section 5649, Mansfield's Digest, is the same as Section 46 of the Revenue Act.

Board of Commissioners, after full examination and consideration, have determined that such limitations and restrictions are unconstitutional, null and void; and they are not bound thereby.

"The several railroad companies are therefore requested to render full statements of all their property of whatever kind or description, and the true value thereof, in accordance with this determination, and without regard to the restrictions and limitations aforesaid, on or before the eleventh day of May, 1885, at which time a full hearing will be accorded by the board to all who desire to be heard.

"SIMON P. HUGHES, *Governor.*
"A. W. FILES, *Auditor.*
"E. B. MOORE, *Secretary of State.*
"*Board of Railroad Commissioners of Arkansas.*"

The bills of complaint then allege that the Railroad Commissioners afterward valued the "railroad track" of said corporation not in accordance with the express provisions of said Act, nor with the list or schedule filed by said corporation with the Secretary of State, but by including in such pretended valuation and in their lists and schedules the embankments, tunnels, cuts, ties, trestles, and bridges on the line of road of said corporation, as they had expressed their determination to do in said notice, by reason whereof the valuation of said "railroad track" has been nearly doubled by said Railroad Commissioners or raised from $326,390, as listed by said corporation, to $645,387, as appraised by said commissioners and certified by the assessors of said several counties upon the line of road of said company, all of which appears by copies of said lists and valuations annexed to the bills of complaint; that the plaintiffs are advised and aver that all said acts and doings on the part of said Railroad Commissioners constitute and are a usurpation of powers in no wise delegated to them, and an arbitrary assumption of powers in express terms delegated to the judicial and legislative departments of the government of the State; that railroad property in this State can be valued for the purposes of taxation, and taxes thereon assessed, levied, and collected only by virtue of statutes in that behalf enacted; that by reason of the aforesaid illegal, arbitrary, and despotic acts of said Railroad Commissioners in connection with the listing and valuation of the "railroad track" of the plaintiff corporation, as the same is defined in said Act, the taxes assessed thereon, and which are now sought to be collected by the

collectors of said several counties, have been assessed and levied without due process of law and in direct violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," inasmuch as it is a direct contradiction in terms to maintain that taxes assessed in violation of express provisions of law are assessed by due process of law, and inasmuch as taxes can be assessed, levied, and collected only by virtue of express provisions of law.

The bills of complaint further allege that it was within the competency of the legislature to require and provide that the aforesaid lists and schedules specified in the 45th and 46th Sections of said Act "shall not include nor value embankments, tunnels, cuts, ties, trestles or bridges," and that the Railroad Commissioners should not appraise the same, as is provided in Section 49 of said Act; that said Act was passed pursuant to the power delegated to the legislature in and by the Constitution of said State, which provides as follows, in Section 5, Article XVI., to wit: —

"All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, *Provided*, the General Assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions and privileges in such manner as may be deemed proper. Provided, further, That the following shall be exempt from taxation: Public property used exclusively for public purposes, churches used as such, cemeteries used exclusively as such, school buildings and apparatus, libraries and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity"; that, by virtue of said Section 5, Article XVI., of the Constitution, supreme and absolute power and authority are delegated to the legislature to prescribe the way and manner by which the various descriptions of properties throughout the State and subject to taxation shall be classified and valued, and the taxes thereon assessed, levied, and collected, subject only to the limitations and restrictions contained in said Section 5, and also in Section 6, which provides that "all laws exempting property from taxation other than as provided in this Constitution shall be void"; that

in and by said Act of March 31, 1883, separate and distinct methods are provided, among other things, for ascertaining the value of real estate and personal estate, and also for ascertaining the value of merchandise, of the property and business of manufacturers, of banks, of brokers, of stock jobbers, of express and telegraph companies, of gas, telephone, bridge, and street railroads, and of other companies or corporations incorporated under the laws of said State, and also the mode of ascertaining the value of railroads; that, by the Constitution of the State, the whole subject of taxation is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of valuation and taxation by different methods for different classes; that the rule of equality and uniformity in respect to the subject only requires that the same means and methods be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances, and that the different nature and uses of their property justify the discrimination between the different classes of property the discretion of the legislature has seen fit to impose; that, under and by virtue of the power thus expressly conferred upon the legislature, it is their sole duty and province to prescribe the mode of valuing railroad property for the purposes of taxation, and in their discretion to provide whether all the various and diverse elements or parts which, when combined, constitute a railroad, shall be taken into the account, or whether certain of said elements or parts ought in equity and justice to be excluded in estimating the value and earning capacity of such railroad, and that, so long as the same method of valuing such "railroad track," as defined in said Act, applies equally and uniformly to all railroads within the State, and no discrimination exists, the provisions in said Section 5, Article XVI., of the Constitution, relating to equality and uniformity, are satisfied; that the question what elements shall be included and what elements excluded in ascertaining the value of the "railroad track," as defined in said Act, for the purposes of taxation, is not a judicial question, but one which by Section 5, Article XVI., of the Constitution, is to be ascertained solely by the legislature from time to time in the exercise of its discretion, and which, when expressed and declared in the form of a statute law, must stand as the law of the State until amended or repealed; that, when the legislature has prescribed that certain elements shall be excluded in ascertaining the true value of the "railroad track," as defined in said Act, all the officers of the State,

judicial as well as executive, are in law bound to treat such expressions of the legislative will, not as an attempt illegally to exempt property from taxation, but simply as a legitimate and lawful exercise of the discretion imposed upon them by the Constitution of the State relating to the just and proper method of ascertaining the value of the railroad track of railroad corporations for the purposes of taxation, and it is to be presumed by all the officers of the State, judicial as well as executive, that the legislature has in good faith simply exercised the powers in express terms delegated to it by the Constitution, and has observed the limitations and restrictions therein provided.

The bills of complaint in each suit further allege that prior to the passage of said Act of March 31, 1883, the mode of ascertaining the value of the "railroad track" and all other property of railway companies necessary to the daily running operations of said road was ascertained by ascertaining the net earnings of said companies for the year ending December 31 preceding; and the value of such properties was appraised by the Railroad Commissioners with reference to such net earnings, and the assessment and taxes were made and levied thereon, with the proviso that the net earnings should not be less than twenty-five per cent. of the gross receipts within said period. A copy of said Act approved March 8, 1879, entitled "An Act to Amend Sections 5098, 5099, 5100, 5102, and to Repeal Section 5103 of Gantt's Digest," is annexed to the Appendix to this brief, as well as a copy of said sections of Gantt's Digest.

The bills of complaint then allege that, if the aforesaid method of ascertaining the value of the "railroad track" for purposes of taxation shall be held to be unconstitutional, null and void, then the only mode by which such value can be ascertained is under the aforesaid Act of March 8, 1879, inasmuch as the mode of valuation provided for in said Act of March 31, 1883, must, so far as relates to the "railroad track" as defined in said Act, be taken as a unit, incapable of division and separation; and, if any part thereof is declared unconstitutional, null and void, all its parts and provisions must also be so declared, and inasmuch as it is beyond the power of the judiciary to legislate and to declare that a mode of valuation expressly prohibited by the legislature can be substituted for the mode in express terms prescribed by the legislature.

The bills of complaint in each suit allege that the plaintiff corporation has paid the taxes assessed upon its "rolling stock" and all other properties not included in the term "railroad track," and that

they would willingly pay the taxes assessed upon the "railroad track," had a legal valuation and assessment thereof been made. In the bill of complaint brought by the plaintiff corporation, said corporation alleges that it would willingly tender to the several collectors of said several counties the amounts respectively and lawfully due them as taxes upon its "railroad track" for the year 1885, and, upon their refusal to accept the same, bring said amounts into Court, if any means existed by which the said corporation could ascertain the amounts lawfully due, but that the appraisal and valuation made by said Railroad Commissioners was made *in solido*, and the valuations put by them upon embankments, tunnels, cuts, ties, trestles, and bridges are so intermingled with their valuations of the "railroad track" as defined in said Act, that it is impossible to separate the lawful from the unlawful valuations and assessments. Said corporation offers to pay the amounts lawfully due when the same shall have been ascertained.

These allegations are also made by the trustees in the bill of complaint filed by them, and the further allegations that, to the best of their knowledge, information, and belief, said corporation ought, under said Act of March 31, 1883, to pay to said several collectors certain specified sums as taxes upon said "railroad track," amounting in the aggregate to $4,568.82, assuming said Act to be a constitutional enactment in all its parts and provisions; and said trustees paid into said United States Circuit Court said sum of money to be apportioned and paid to said several collectors in full payment and discharge of all taxes lawfully due and payable upon said "railroad track" for the year 1885, unless upon an accounting a larger sum be found due, in which case said trustees offer to pay such larger sum. "But said payments into court are made upon the express condition that said Act of March 31, 1883, and all its parts and provisions, so far as the same relate to the mode of ascertaining the value of railroad properties and of assessing the same, and more particularly Sections 45, 46, 47, and 49 of said Act are finally held and adjudged to be constitutional enactments, and as within the power of the legislature of the said State, and also upon the further express condition that the valuation and appraisal of the said 'railroad track,' as defined in said Act, and as made by said Railroad Commissioners, for the year 1885, are finally held to be without due process of law, and utterly null and void. But if the provisions of said Act of March 31, 1883, so far as the same relate to the mode of ascertaining the value of the 'railroad track' of said

corporation, as the same is defined in said Act, and particularly Sections 45, 46, and 47 thereof, are held to be unconstitutional, null, and void, then the plaintiffs hereby and herein pay into this honorable court only so much and such parts of said gross sum of $4,568.82 as may suffice to pay and discharge the balance of the taxes which would be due and payable if levied and assessed under said Act of March 8, 1879, after deducting from the gross sum so ascertained to be payable the gross amounts heretofore paid by said corporation to said several collectors as taxes upon the 'rolling stock' of said corporation as defined in said Act."

Each bill of complaint alleges that the several county assessors have delivered to the several county clerks the list or schedules of valuations and assessments thereon of said "railroad track," and said several county clerks have extended on their tax-books against said "railroad track" so valued and assessed the several amounts claimed to be due from said plaintiff corporation to said several defendant collectors; but said corporation has refused to pay the taxes assessed upon said "railroad track" for the reasons hereinbefore fully set forth: that several collectors have returned the same to the county clerks of their respective counties as delinquent; that said several county clerks have caused said "railroad track" to be published in the list of delinquent lands in their respective counties, with a notice that said "railroad track" will be sold on the second Monday of April, or so much thereof as may be necessary to pay the taxes, penalties, and cost due thereon; and that, unless restrained by the order and decree of this court, said several county collectors will proceed to sell each so much and such part of said "railroad track" as is situated in their several respective counties, in pursuance of said notices. The bill filed in the Pulaski court prayed for such restraining order and injunction, and for other and further relief.

In addition to the foregoing allegations, the bill of complaint filed by the trustees' appellants in said second suit sets out the proceedings instituted by said plaintiff corporation in the State courts, with the results thereof, and avers that neither said suit nor the decision of the Supreme Court of said State therein is in any way binding upon this Court, but that they are entitled of right to the judgment and decree of said United States Circuit Court in relation to the matters and things above set forth, inasmuch as said plaintiff corporation is by the judgment and decree of said Supreme Court deprived of a remedy essential to a vindication of the rights

derived from and protected by Section 1, Article 14 of the Amendments to the Constitution of the United States, which provides that "no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Said trustees also allege that the "railroad track" and right of way of said Little Rock and Fort Smith Railway is a strip of land, one hundred feet in width, with its road-bed and all improvements thereon, extending throughout the entire length of its line of road, a distance of about one hundred and seventy miles, and running in and through eight several counties; that said "railroad track" is continuous, indivisible, and incapable of separation, and each and every part thereof is necessary to the operation of its road, and in order to enable said corporation to exercise its franchises and to perform its duties to the public as a common carrier, and to the government as a carrier of United States mails; that by the provisions of said Act of March 31, 1883, the above-named several county collectors can sell only so much and such parts of said "railroad track" as is situated in their several and respective counties; and that, if said eight county collectors shall proceed to sell so much and such parts of said "railroad track" as is situated within their respective counties, there may be eight distinct and independent purchasers, neither of whom can in any way own or use any other part of said "railroad track" than that which is situated within the limits of said respective counties; that said railroad corporation having paid the taxes assessed upon its "rolling stock" as defined in said Act, and having also paid all other taxes assessed upon its remaining personal and real properties other than its said "railroad track," a multiplicity of suits must necessarily arise between such purchasers and the plaintiffs and said plaintiff corporation, should the purchaser or any of the purchasers at any said sales of said "railroad track" attempt to exercise any of the functions of a common carrier or to use said track, or should said purchaser or any of said purchasers attempt or undertake to prevent said corporation from exercising its franchises and conducting its business as a common carrier; that, under the laws of said State of Arkansas, taxes assessed upon real estate, including the "railroad track" of said corporation, are a lien thereon from the first Monday in February in the year for which they are assessed until they are paid, with any penalties that may accrue thereon; and, if said sales are made, a cloud will be cast and created upon the title of said corporation and of

said plaintiffs, trustees, to its "railroad track," in each of said counties on the line of said railway, and, further, that irreparable damage will be done to said corporation, its business and its properties; and also that under the laws of said State no adequate provision is made, nor does any adequate remedy exist, for the recovery of taxes paid, even though the same are illegally assessed, levied, and collected.

The trustees' appellants' bill of complaint then sets forth the duties of the collectors and of the clerks of the county courts, in making sales of real estate, as follows: —

"That the collector of each county is required to attend at the court-house in his county on the second Monday in April of each year, and then and there, within certain prescribed hours, to proceed to offer for sale each tract of land, city or town lot, for the taxes, penalty, and costs thereon; and the person offering at such sale the amount of taxes, penalty, and costs due on the whole tract or lot, or the smallest subdivision thereof, shall be the purchaser thereof; and, if no person shall offer or bid the amount of taxes, penalty, and costs due on said tract, lot, or parcel thereof, then said collector is required to bid the same off in the name of the State of Arkansas, bidding therefor the amount of taxes, penalty, and costs thereon, and said collector is also required to continue said sales from day to day, until each tract of land, city or town lot, or part thereof, shall be sold. The clerk of said County Court is also required to attend at such sales of delinquent lands by said collector of said county, and to make record thereof, describing the several tracts of land, stating the part thereof sold, and the amount of taxes, penalty, and costs due thereon, and to whom sold, and also to record in a separate book each tract of land, town or city lot, sold to the State, together with the taxes, penalty, and costs due thereon. Said county clerk is also required immediately after such sale to make out and certify to the auditor of State a copy of each of said bids as recorded in said book, together with an abstract thereof showing the total valuation of the property contained in each, and the total amount of taxes, penalty, and costs thereon in each.

"Said collector is also required to make out and deliver to the purchaser of any land sold as aforesaid a certificate of purchase, describing the land sold, which certificate is assignable in law; and an assignment thereof vests in the assignee and his legal representatives all the right, title, and estate of the original purchaser. The

clerk of the county clerk is also required immediately after the sale to transfer upon the tax-books all lands sold for taxes to the name of the purchaser. All lands sold for taxes may be redeemed in the manner prescribed in said Act at any time within two years from the date of sale; and, if the same shall remain unredeemed, the county clerk of each county is required, on the production of the certificate of purchase, to execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the tract or lot described in each certificate, such deed to be in the form and to have the force and effect set forth in said Act. Said county clerk is also required, immediately after the expiration of said two years, to make out a certificate of sale to the State for all lands bought, as shown by the aforesaid records in his office, which have not been redeemed, and state therein the amount of the taxes, penalty, and costs thereon, and cause the same to be recorded in the recorder's office in the county; 'and thereupon,' under the provision and in the words of said Act, 'the title to all lands embraced in such certificate shall vest in the State, and the clerk shall immediately transmit such certificate to the commissioner of State lands, and thereupon the said lands shall be subject to disposal as other forfeited lands shall be.'"

The prayers for relief in the bill, as amended, of the trustees are:—

1. That said defendant collectors may be restrained and enjoined, both during the pending of this suit and perpetually, from selling or offering for sale the "railroad track" of said Little Rock and Fort Smith Railway, as the same is defined in said Act, or any part thereof, for the non-payment of taxes assessed upon said "railroad track," and based upon or in accordance with the valuation made by the Board of Railroad Commissioners of said State of Arkansas in the year 1885.

2. Or, if said several county collectors shall have sold so much and such part of said "railroad track" as is situated in their several counties before the aforesaid writs of injunction shall have issued and been served upon said several collectors, then and in such case that said several collectors and their deputies, agents, and servants may be restrained and enjoined, both during the pending of this suit and perpetually, from making out and delivering to the purchaser or purchasers of any part of the "railroad track" of said corporation, as defined in said Act, a certificate or certificates of such purchase or purchases.

3. That several county clerks, their deputies, agents, and servants, may also be restrained and enjoined from transferring upon the tax-books of their said several and respective counties any part of the aforesaid "railroad track" of said corporation that may be situated in his said county, and that has been sold or attempted or pretended to have been sold by any and every defendant collector, or from making any entries whatever in said book relating to such pretended purchase.

4. That said several county clerks may also be restrained and enjoined, both during the pending of this suit and perpetually, from making out and certifying to the Auditor of said State a copy or copies of each and every and all of such lists and parts of said "railroad track," as defined in said Act, as may have been sold or pretended to have been sold to said State, and also from executing or delivering to any purchaser or purchasers of said "railroad track" a deed of conveyance of said "railroad track" or any part thereof, and also from making out a certificate or certificates of sale to said State for any part of said "railroad track," and from recording such certificate or certificates in the recording office of their said several and respective counties, and from transmitting or in any way attempting to transmit such certificate to the Commissioner of State Lands of said State.

This bill also contains a prayer that, in case this Court shall hold that the provisions of said Act of March 31, 1883, so far as relates to the valuation and assessment of the "railroad track" of said corporation, as defined in said Act, are unconstitutional, null and void, then and in such case this Court will order that an account be taken of the net earnings of said corporation for the year ending Dec. 31, 1884, in accordance with the provisions of Sections 5098 to 5103, both inclusive, of Gantt's Digest of the laws of said State of Arkansas, as amended by said Act of March 9, 1879, and that out of the funds paid into this Court by the plaintiffs, as aforesaid, the plaintiffs be ordered to pay to several county collectors the amounts found to be severally due and payable to them under such valuation and accounting, after deducting therefrom the sums of money heretofore paid them, so far as the same should be deducted, and that the balance of said moneys be paid over to the plaintiffs.

## DEFENDANTS' ANSWER.

In the suit originally brought in the State court, the defendants filed an answer and demurrer, in which they say that, "for answer to so much and such parts of the said plaintiff's complaint herein as they are advised it is material and necessary for them to answer, they admit the corporate existence of the plaintiff, as stated in said complaint, and that all of its said property located on its right of way in said counties was assessed for taxation by the Board of Railroad Commissioners for this State in accordance with the provisions of the Act of March 31, 1883, regulating and providing for the collection of the revenues of this State, and that said board, in estimating the value of the "railroad track" of plaintiff, as defined in said Act, disregarded that part of Section 46 of said Act which attempts to exempt from assessment and taxation embankments, tunnels, cuts, ties, trestles, and bridges of railroad corporations; but they deny that said board, in ascertaining and fixing the valuation of plaintiff's "railroad track" for taxation, ascertained and fixed the value of the embankments, cuts, ties, trestles, and bridges separate and apart from the other property composing such "railroad track," or according to the cost of construction of such embankments, cuts, ties, trestles, and bridges. And they aver the truth to be that said board, in the discharge of its said duty, assessed all of the real property of plaintiff coming within the definition of "railroad track," and including embankments, cuts, ties, trestles, and bridges at its value, and all of the personal or movable property of plaintiff coming within the definition of "rolling stock" at its value; that such assessment was not excessive or above the value of such property; and that said board fully and in every particular complied with its duty under the Constitution and laws of this State in making such assessment; and they deny each and every allegation of plaintiff's said complaint to the contrary.

"And defendants demur to said complaint, because they say that it does not state facts sufficient to constitute a cause of action."

In the second of the above entitled suits, the defendants filed a plea in bar and also, by special leave of court, a demurrer.

The former sets up the filing of the preceding bill of complaint

by the Little Rock and Fort Smith Railway in the Pulaski Chancery Court and all the proceedings thereunder, including the judgment of the Supreme Court of the State, and annexes to said plea a copy duly certified of the record of all the proceedings in said suit, and alleges that said cause so determined in said Supreme Court was and is the same identical cause as between the same parties in interest and for the same subject-matter as this cause, and none other.

# ARGUMENT.

## INTRODUCTORY REMARKS.

The plaintiff in error, the Little Rock and Fort Smith Railway, concedes that there is no error in the proceedings in the State courts unless the record discloses a violation by the State of that clause in Section 1 of the Fourteenth Amendment to the Constitution of the United States, which reads as follows: —

"Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

These provisions, we contend, have been outraged and violated:

First, by the Executive officers of the State — to wit, the Board of Railroad Commissioners — in undertaking, *not simply without authority of law, but deliberately and in violation of the express provisions of the statute*, to value and appraise for purposes of taxation certain component parts of the "railroad track," as defined in the Revenue Act of March 31, 1883, of the plaintiff corporation which the statutes in plain and positive terms commands them *not* to value and appraise, and upon which unlawful appraisal and valuation taxes have been assessed and levied, and are sought to be collected by the State.

Second, by the Judicial Department of the State in justifying and upholding such arbitrary and oppressive acts on the part of the Railroad Commissioners and denying to the plaintiff corporation the protection and rights granted by the above clause of the Fourteenth Amendment.

Third, it will also be found that the Legislative Department of the State has unconsciously sinned against the same clause of the Fourteenth Amendment, inasmuch as the statute itself denies to them, but grants to individuals, full and ample protection against illegal and unjust taxation.

It is only just to add, however, that the attention of the State courts was not specifically directed to this last proposition, although a violation of the entire clause above quoted from the Fourteenth Amendment was alleged in the bill of complaint.

We propose, therefore, to lay aside this last contention for the present, and first to try to establish the truth of the remaining two propositions: to wit, that, first, the Executive officers of the State, and, second, the Judiciary of the State, have deprived and are seeking to deprive the plaintiff corporation of its property without due process of law, and have denied to it the equal protection of the law.

It is important in the outset to clearly understand what is meant by the phrase "No State," and what instrumentalities, agencies, and officers are included in those words. In the Civil Rights Cases, 109 U. S. 3, this Court, speaking through Mr. Justice Bradley, in reference to the first section of the Fourteenth Amendment, remark as follows on page 11:—

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation and State action of every kind which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property, without due process of law, or which denies to any of them the equal protection of the laws."

See also

United States *v.* Cruikshank, 92 U. S. 542.
Virginia *v.* Rives, 100 U. S. 313.

In *Ex parte* Virginia, 100 U. S., on pages 346, 347, Mr. Justice Strong gives a more definite meaning to the phrase "No State," as used in the Fourteenth Amendment. After stating that "the prohibitions of the Fourteenth Amendment are directed to the States, and they are to a degree restrictions of State power," he says,

"They have reference to actions of a political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the

name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

This same definition is reaffirmed and quoted by Mr. Justice Harlan in

Neal *v.* Delaware, 103 U. S. 370–397.

It will hardly be contended that the Board of Railroad Commissioners of the State of Arkansas are not officers or agents of the State within the meaning of the language used by Mr. Justice Strong, as above quoted; for they are not merely the principal Executive officers of the State, but they are the only officers authorized by law to make the valuations and appraisals of the "railroad track" and "rolling stock" of railroad companies, upon which valuations and appraisals all property taxes — State, county, and municipal — are based. And so also are the collectors of taxes for the several counties agents of the State, inasmuch as the State taxes are collected solely through their agency and instrumentality.

"Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State."

The office of collector is subject to the control of the legislature, which has power to provide for his appointment by the governor, or in any other mode it may direct.

Falconer *v.* Shores, 37 Ark. 386.

It is true that the office of Railroad Commissioners is not recognized by the present Constitution of the State; but the legislature has full power to create it, and in its wisdom called it into being by this very Act, for the express and sole object of valuing and appraising the "railroad track" and "rolling stock" of railroad companies for purposes of taxation. Their powers, duties, and functions are limited and prescribed by the Act which created the office until enlarged or limited by subsequent legislation; and that has not been done.

It is not proposed to again state in detail what powers have been conferred upon the Railroad Commissioners nor to define how far

their jurisdiction extends; for we have already sufficiently discussed that subject (see pages 3 to 6 of this brief).

Our object now is simply to establish the truth of our contention that, if the "Railroad Commissioners" have in any of their acts, doings, and proceedings connected with the valuation and appraisal of the "railroad track" of the plaintiff corporation for the purposes of taxation for the year 1885, so conducted themselves as to render them amenable to the charge of depriving or seeking to deprive the plaintiff corporation of any property without due process of law, or of denying to it the equal protection of the laws, then all such acts, doings, and proceedings are to be deemed as a violation by the State itself of so much of the clause in the first section of the Fourteenth Amendment as inhibits the State from doing those very acts and things, they being the duly authorized agents of the State and acting by virtue of their office, and not as individuals.

I.

The direct admissions made in the defendants' answers — to wit, first, that the Board of Railroad Commissioners "in estimating the value of the 'railroad track' of plaintiff, as defined in said Act, disregarded that part of Section 46 of said Act which attempts to exempt from assessment and taxation embankments, tunnels, cuts, ties, trestles, and bridges of railroad corporations and companies," and, second, "that said board, in the discharge of its said duty, assessed all of the real property of plaintiff coming within the definition of 'railroad track,' and including embankments, cuts, ties, trestles, and bridges at its value" — conclusively demonstrate that the valuation and appraisal of such "railroad track" as made by said Board, was not only without warrant of law, but in deliberate violation of the express provisions of the statute in that behalf enacted.

They try, to be sure, to break the force of these admissions by coupling them with allegations that all of the plaintiff's property "located on its right of way in said counties was assessed for taxation by the Board of Railroad Commissioners for this State, in accordance with the provisions of the Act of March 31, 1883," and by denying that they valued embankments, cuts, ties, tunnels, trestles, and bridges separate and apart from the other component parts of the "railroad track," and that the assessment or valuation as made by said Board was excessive or above the value of such property.

But the question here is, not whether a separate valuation was or was not made of such component parts of the "railroad track" as the Railroad Commissioners are expressly prohibited from valuing them at all, nor whether the valuation as found by the Commissioners was or was not excessive (the practical result was to nearly double it), *but whether they had or had not any power, authority, or jurisdiction whatever to make the valuations and appraisals which they acknowledge they actually did make, and which were made in accordance with the resolution and determination expressed in their notice of April* 24, 1885.

That is the question, and the only question, which this Court is now called upon to decide, applying to the several acts and doings of the Railroad Commissioners as set forth in the bill of complaint and admitted by the answer and demurrer in connection with their valuations and appraisals those well-established principles of law which govern the valuation, assessment, and taxation of properties of all kinds and descriptions.

Those elementary principles are well and concisely stated by the late Chief Justice Church, in delivering the opinion of the Court of Appeals of New York in the case of the National Bank of Chemung of Elmira *v.* The City of Elmira, 53 New York Rep. 49–52, which in many of its aspects is very analogous to the cases at bar.

His opinion begins with the following statement of the case, namely: —

"The assessment and tax against the plaintiff were void. *They were made and levied, not only without authority, but in violation of an express statute.* Chapter 761 of the Laws of 1886 declares that no tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of the State or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein.

"It is undisputed that the plaintiff was a banking association, organized under the authority of the United States, and that the assessment and tax in question were upon the capital of the bank, and that the amount of the tax was compulsorily collected of the plaintiff, and paid into the treasury of the defendant. *A mere statement of the case ought to be sufficient to determine it,* without further elaboration" (so we say of the case at bar); "but it is due to the importance of the question, and to those entertaining other views, to advert to some of the principles governing this class of cases."

The opinion of the court then proceeds as follows: "It is conceded that the plaintiff is entitled to recover, if the assessment is to be regarded as illegal, and not simply erroneous. It is claimed that the assessors had jurisdiction to make the assessment, that their act was judicial, and, although erroneous, is conclusive until reversed by a direct proceeding instituted for that purpose. *This proposition cannot be predicated of this case, either in fact or in law.* Some of the duties of assessors are judicial in their nature; and as to these, when acting within the scope of their authority, they are protected from attack, collaterally, to the same extent as other judicial officers. *But they are subordinate officers, possessing no authority except such as is conferred upon them by statute; and it is a well-settled and salutary rule that such officers must see that they act within the authority committed to them* (15 N. Y. 321, and cases cited). *When they have no power to act at all in a given case, either as to person or property, their acts are void. So, when their right to act depends upon the existence of some fact which they erroneously determine to exist, their acts are void. So, in performing a ministerial duty, their acts are void, if not in accordance with law.* But having jurisdiction of the person and subject-matter, if they err in the exercise of it, they are protected. These general principles are elementary, and are abundantly sustained by authority; and, if any confusion exists upon the question, it has arisen from a failure properly to apply them."

The learned Chief Justice, after reviewing numerous previous decisions of the court in cases more or less similar and analogous, then proceeds as follows, pp. 58, 59, namely: "While there is some apparent conflict in the application of settled principles to particular cases, I am confident that no adjudged case can be found which will relieve the defendants from liability. The distinction is between an *erroneous* and an *illegal* assessment. The former is when the officers have power to act, but err in the exercise of the power; the latter, where they have no power to act at all, and it does not aid them to decide that they have.

"It is argued that they have jurisdiction to determine what property is taxable in the town. *This is a mistake. The legislature determines that question, and the officers have no power over it.* The statute requires the assessors to 'ascertain by diligent inquiry' two things: 1. The taxable inhabitants; 2. The taxable property. Where they decide erroneously as to a taxable inhabitant, it is conceded, and the Mygatt Case (15 N. Y.) holds, that they are liable as tres-

passers. Why not, when they err as to taxable property? The duty is precisely the same, and the power conferred is in the same language. Assessors must have jurisdiction over the person and subject-matter. The person must be an inhabitant of the town, and the property must be taxable. Otherwise, the assessment is illegal and void. The legislature has declared that the capital of national banks is not taxable. Bank-shares are not capital (3 Wallace, 573). The assessors have therefore no jurisdiction over it. In this case, they exercised no judgment. There was none to be exercised. There was no dispute about the facts. There was no pretence of mistake even. *They simply decided to violate the statute;* and, while bad faith will not be imputed, we must assume that they did so voluntarily and intentionally, and yet such an act is claimed to be judicial, and therefore exempt from collateral attack.

"The remedy by *certiorari* is not adequate. It is dilatory, and rests in the discretion of the court to give it or not. It is appropriate to review erroneous assessments. Taxation for public purposes is a conceded power of government; but it must be enforced strictly according to law, or it becomes the most obnoxious means of confiscation. The rights of the citizen should be sedulously guarded and protected against the lawless imposition of burdens, *and the principle involved in this case is vital to the protection of private property from the grasp of irresponsible power.* The plaintiff's property has been forcibly taken from it in violation of law, and it would be discreditable to the proper administration of justice not to give an effectual remedy."

It is respectfully submitted that the principles thus so clearly stated are decisive of our contention that the acts of the Board of Railroad Commissioners in valuing and appraising the "railroad track" of the plaintiff corporation, as defined in Sections 46 and 47 of the Revenue Act, and the taxes assessed upon such valuations and appraisals, are utterly null and void, as being not only without warrant of law, but in violation of the express provisions of the statute.

We have already shown on pages 3 to 6 of this brief that, by the provisions of Section 49 of the Revenue Act, the Railroad Commissioners have no power to value and appraise any other list or schedule of the "railroad track," as defined in the Act, than that which has been filed by the Railroad Company in the office of the Secretary of State, provided such list or schedule has been made

in conformity with the directions prescribed in Sections 46 and 47 of the Act. And it is conceded that the list or schedule of the "railroad track" filed by the plaintiff corporation was made out in exact conformity with such directions.

When, therefore, the Railroad Commissioners demanded, as they did demand in their notice of April 24, 1885, that the plaintiff corporation should make out another list or schedule, including and valuing certain component parts of the "railroad track" which the statute itself in express terms prohibited the owners of railways from including and valuing in their list or schedule, they not only exceeded their powers, but demanded that the railway companies should aid them in violating the laws of the State. Such additional list was not furnished by the plaintiff corporation; but the Railroad Commissioners adhered to their resolution and determination as expressed in such notice, and made their valuations and appraisals, as is admitted in the defendants' answer, by including and valuing the very elements or parts of the "railroad track" which the statute expressly prohibits them from valuing.

If this does not constitute an exercise of power, arbitrary and oppressive in its nature and wholly without warrant of law, it is difficult, if not impossible, to imagine what is meant by those phrases; for they then become mere "sounding brass and tinkling cymbals."

The question, therefore, whether the plaintiff corporation is entitled to invoke the aid of this Court and the protection given by so much of the first section of the Fourteenth Amendment as prohibits any State from depriving any person of his property without due process of law, and also from denying to any person within its jurisdiction the equal protection of the laws, resolves itself into the following two preliminary inquiries: —

First, Can taxes which are based upon appraisals and valuations made by the duly appointed Executive officers of a State but which are made in violation of express provisions of the law of the State and are therefore utterly null and void, be said to have been assessed by due process of law within the meaning of the Fourteenth Amendment?

Second, Do the Executive officers of a State deny to any person within its jurisdiction the equal protection of the laws, when they arbitrarily and in utter "disregard," as they admit, of the express provisions of a statute, deliberately denied to a railway corporation the benefits of such provisions?

These inquiries, be it observed, do not relate to the statute law itself, but are limited and confined solely to the acts of the officers of the State whose duty it is to execute the law.

Both of these inquiries, if any answer be necessary, are virtually answered by this Court in the case of Davidson *v.* New Orleans, 96 U. S. 97, wherein Mr. Justice Miller gives an illustration of what would be "due process of law"; and Mr. Justice Bradley, on the other hand, gives an illustration of what would not be "due process of law," within the meaning of the Fourteenth Amendment.

For the sake of convenience, we will quote first from the opinion of Mr. Justice Bradley, as it often serves the purpose best to state the negative rather than the positive in defining phrases, or what is excluded rather than what is included in ascertaining their meaning.

On page 107, Mr. Justice Bradley thus expresses his views: —

"I think, therefore, we are entitled, under the Fourteenth Amendment, not only to see that there is some process of law, but 'due process of law,' provided by the State law when a citizen is deprived of his property; and that, in judging what is 'due process of law,' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these. And, if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law'; *but, if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.'*"

The fact that this statement is made in reference to the law itself instead of to the acts of the officers of the State in executing the law does not affect our contention; for, as stated by Mr. Justice Strong in the case of *Ex parte* Virginia, *supra*, a State may violate the provisions of the Fourteenth Amendment as well through its executive officers or judiciary as through its legislature. When, therefore, the executive officers of a State act in deliberate violation of the provisions of a statute prescribing how certain property shall be valued for purposes of taxation, their action in the premises at once becomes just as arbitrary, oppressive and unjust as if the law itself was so written. Hence, the language of Mr. Justice Bradley is as applicable to the Executive officers of the State as it is to a law enacted by the Legislature, the effect and result being the same in each instance. In the one case, the acts

are the acts of the Executive Department, while in the other they are the acts of the Legislative Department.

In the same case, pp. 104, 105, Mr. Justice Miller, after remarking upon the impossibility of giving any definition to the term "due process of law" "which would be at once perspicuous, comprehensive, and satisfactory," and the wisdom of ascertaining "the intent and application of such an important phrase in the Federal Constitution, by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded," lays down the following proposition as applicable to the case then before the court, to wit: —

"That whenever by the laws of a State, *or by State authority*, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, *with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case*, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

Whether the Revenue Act (1883) *itself* is obnoxious to the charge of being in conflict with any of the prohibitions embraced in the Fourteenth Amendment is a subject which will be discussed hereafter; but, for the present, it is assumed that it is not, for our contention now is limited to the question whether the *executive* officers of the State, excluding both the judicial and legislative departments, have violated any of those provisions.

It is to be observed that Mr. Justice Miller's illustrations take a broader range than that given by Mr. Justice Bradley; for the latter confines his remarks to the statute law, pure and simple, while the former includes not only the law itself, but the State authorities, whether executive, judicial, or legislative.

Assuming, then, that the Revenue Act of 1883 itself provides for a mode of confirming or contesting the taxes imposed upon the appraisal and valuation made by the Railroad Commissioners, is it not clear that the "proceedings" to which Mr. Justice Miller refers as "appropriate to the nature of the case," in order to make the judgment rendered thereon "due process of law," must be "pro-

ceedings" had before an impartial tribunal which has not prejudged the questions involved, which "hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial"?

In the case at bar, did the Board of Railroad Commissioners, when they met on the eleventh day of May, 1885, constitute such a tribunal as is contemplated by the phrase "due process of law"? And did they then deny to the plaintiff corporation the equal protection of the laws? These questions are answered by the notice of such intended meeting issued by them under date of April 24, 1885, in which they expressed their determination to make their valuations without regard to certain statute provisions, and by their subsequent proceedings in carrying such determination into practical effect and by nearly doubling the valuations already made.

When the proposition can be successfully maintained that taxes based upon valuations made in violation of law, and therefore absolutely null and void, can be collected and enforced by all the machinery of the law equally well with taxes lawfully assessed upon valuations made in strict conformity with the law, then, and not until then, can the acts and doings of the Railroad Commissioners as developed in the case at bar be held to be "due process of law" within the intent and meaning of the Fourteenth Amendment.

And when, again, all distinctions between an arbitrary exercise of power and a lawful exercise of power are wiped out, then, and not until then, can it be truthfully said that the Railroad Commissioners have not denied to the plaintiff corporation the equal protection of the laws.

II.

The Supreme Court of Arkansas, the court of last resort in the State, has rendered itself amenable to the charge of having deprived or seeking to deprive the plaintiff corporation of its property without due process of law, and of having denied to it the equal protection of the laws, in that, by its judgment and decision in the first of the above suits, it has adjudged and decreed that the executive officers of the State of Arkansas "are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution" of the State, and, therefore, that the acts and doings of the Railroad Commissioners in connection with the valuation and appraisal of the "railroad track" of the plaintiff corporation, as set forth in the bill of complaint and admitted by the answer and demurrer, are and were a lawful, and not an arbitrary, exercise of power on their part.

No citation of authorities is necessary in support of the proposition that it is for this Court, and for this Court alone, finally to adjudge and determine whether or not a State, acting through either its executive, judicial, or legislative departments, has withheld the protection given to the citizen, his life, liberty, and property, by the provisions of the Fourteenth Amendment; for, if this Court is bound by the decision of any State courts upon such subjects, whatever virtue there may be in the amendments to the Constitution might soon utterly vanish forever.

Thus far, the acts and doings of the Railroad Commissioners in connection with the valuation and appraisal of the "railroad track" of the plaintiff corporation have been considered as an original question, and without reference to the decision of the highest court of the State. It is now our duty to examine such decision, for the propose of ascertaining whether or not the Supreme Court of the State has committed any error in denying to the plaintiff the protection granted by the first section of the Fourteenth Amendment.

The Constitution of the State of Arkansas provides in Article VII., Section 2, that "the Supreme Court shall be composed of three judges, one of whom shall be styled Chief Justice and elected as such, any two of whom shall constitute a quorum; and the concurrence of two judges shall, in every case, be necessary to a decision."

In the case at bar, two of the judges united in an opinion; while the Chief Justice filed a separate opinion, although he arrived at the same general conclusion with his associates, so far as relates to the legality of the acts and doings of the Railroad Commissioners in valuing the "railroad track" of the plaintiff corporation.

Both opinions may be found in the printed record in suit No. 1077, pp. 17 to 25.

The opinion of the majority of the court, which is the only one we propose to consider, after stating the case as presented by the pleadings, and remarking that it is conceded that full power is granted by the Constitution for the establishment of the Board of Railroad Commissioners and for the separate classification of railroad property for purposes of taxation, adds the following:

"And it was manifestly the intention of the legislature that this board should have the sole power of assessing *all railroad property* in this State which is situated on the right of way." The opinion then quotes the provisions of Sections 44, 46, 47, 49, ommitting Section 45 which may be important in construing the Act.

It is manifest that the court did not intend by the remarks above quoted to decide then and there that the legislature intended that the Railroad Commissioners, in making their valuations, should ignore the express provisions of the Act in regard to not valuing embankments, tunnels, cuts, ties, trestles, or bridges; for that is a subject which the court in a subsequent part of their opinion considered. Hence, when they use the expression "*all* railroad property in this State which is situated on the right of way," "all" should be construed as meaning "all which the Act designated and specified."

It is to be observed that the court nowhere in its opinion undertakes to deny that the construction of the Act for which we contend is not the true construction; but they boldly and clearly base their decision upon the distinct ground that "*officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution.*"

In reference to the provisions of the Act which prescribe that embankments, tunnels, cuts, ties, trestles, or bridges shall not be included nor valued, the court say: —

"The meaning of the clause in question is not self-evident. If the legislature intended to enact that the railroad embankments, tunnels, etc., should not be separately assessed, then the board has not attempted to do this; for the pleadings show that the constituents of value which enter into railroad property have not been assessed in separate items or parcels, but *in solido*. The whole line, considered as a thoroughfare and means of transportation, has been valued as a unit."

The *gravamen* of the bill of complaint is not that the assessment or valuation was made *in solido*, nor that the "railroad track" was valued as a unit, but that, in making such valuations, the Railroad Commissioners took into account certain elements which the statute expressly prohibited them from valuing.

Having thus stated one hypothetical construction as to the meaning of the clause in question, which is not raised by the pleadings in the case, the court then proceed to state another construction of which the court intimate the clause is susceptible, to wit: —

"If, on the other hand, the legislature meant to relieve any portion of the property belonging to railroad corporations from the duty

of contributing to the rightful demands of the State in the exercise of its power of taxation, they have undertaken to do something which is quite beyond their power. Now, *officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution. Their primary allegiance is due to the constitution; and, if there be a conflict between the two, the constitution is the higher law, or, rather, the supposed law is not a law at all, being null and void. They do, indeed, incur peril by deciding for themselves in advance of the Courts the unconstitutionality of an enactment; but they are also liable to be punished in damages, if they carry into effect an act which violates the fundamental law.*"

Here we strike the key-note of the decision of the court. The case as stated in the bill of complaint does not rest upon the constitutionality of the Act itself, *but, so far as the Federal questions are involved, upon the acts and doings of the Railroad Commissioners not only in disregarding, but in wilfully violating, the provisions of the Act,* all of which the bill alleges to be "a usurpation of powers in no wise delegated to them, and an encroachment upon the powers in express terms delegated to the judicial and legislative departments of the government of the State."

The bill then alleges "that railroad property in this State can be valued for purposes of taxation, and taxes thereon assessed, levied, and collected, only by virtue of a statute in that behalf enacted; that, by reason of the aforesaid illegal and despotic acts of said Railroad Commissioners, the aforesaid pretended valuation and assessment by said commissioners of the 'railroad track' of the plaintiff railroad corporation is utterly null and void, as being wholly without warrant of law, and that the collection of all taxes levied under such illegal and arbitrary valuation and assessment ought in law, equity, and good conscience to be restrained and enjoined; that it is a well-settled maxim of law that every Act of the legislature duly enacted is presumed to be a constitutional enactment until it is otherwise adjudged by the judicial department of the government, and no such adjudication has been had in regard to the aforesaid Act of March 31, 1883, or any of its parts or provisions; that it is wholly immaterial in this case whether the aforesaid provisions of said Act which said Railroad Commissioners not only ignored, but wilfully and deliberately refused to obey, is or is not a constitutional enactment, inasmuch as said Commissioners are sworn and in duty bound to execute and not to nullify the aforesaid provisions of said Act

until the same are declared to be unconstitutional by competent judicial authority; that, by reason of said unlawful and arbitrary acts and doings of said Railroad Commissioners in connection with the assessment and valuation of the 'railroad track' of the plaintiff corporation, the taxes levied thereon, and which are now sought to be collected by the collectors of said several counties, have been levied without due process of law, and in direct violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'"

Here is the exact case as made by the bill of complaint, and virtually admitted by the defendants' answer and demurrer, so far as relates to the Federal questions.

How do the court meet it?

"*Officers of the executive department*," they say, "*are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution*"!!!

If this proposition be true in reference to the State of Arkansas, it must apply with equal force and effect to all the States of the United States; for the Constitution of the State of Arkansas, like the Constitutions of all the States in the Union, divides the powers of the government of the State into three distinct departments, "each of them to be confided to a separate body of magistracy, to wit: those which are legislative to one; those which are executive to another; and those which are judicial to another." And it further provides that "no person or collection of persons being of one of these departments shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted."

This exact language is used in the original Constitution of 1836, and is in the Constitution now in force,— Article IV., Sections 1 and 2.

Furthermore, the highest courts of no State in the Union have more emphatically affirmed and reaffirmed time and again the wise maxim that Acts of the legislature are to be presumed to be constitutional unless their nullity and invalidity are placed beyond reasonable doubt in the judgment of the courts, and that every reasonable doubt must be solved in favor of the legislative action and the Act sustained.

Woodruff *v.* The State, 3 Ark. 285.
Eason *v.* The State, 11 Ark. 481.

Dabbs *v.* The State, 39 Ark. 353.
Vinsant, Adm'r, *v.* Knox, 27 Ark. 266–278.
English *v.* Oliver, 28 Ark. 317.
Worthen *v.* Badgett, 32 Ark. 496.

Again, in the declaration of rights in the Constitution of the State, it is provided that "no person shall be deprived of life, liberty, or property without due process of law"; while in Article XVI., Section 11, it is expressly declared that "*no tax shall be levied except in pursuance of law.*"

If, therefore, with all these safeguards thrown around the citizen of the State by the fundamental law thereof, for the protection of his property and for the impartial interpretation of the laws, it be true that "officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution," then it necessarily follows that the government of that State has ceased to be a government of laws, and has become a government of men,—an oligarchy composed of the executive officers of the State, with powers as despotic and absolute as those wielded by the Czar of all the Russias.

Imagine, if possible, that the highest courts of all the States of the United States should follow the doctrine thus laid down by the Supreme Court of the State of Arkansas, which, if it be law, they ought to follow, the very pillars and foundations of the Republic would be torn and rent asunder, and all hopes for a constitutional form of government "of the people, by the people, and for the people," forever utterly blasted and destroyed.

The court, in their opinion, cite two sentences from the seven hundred and ninety pages comprising Judge Cooley's work on Constitutional Limitations in support of their doctrine that "the officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution."

One would naturally imagine that larger space would be given to a subject so serious and fraught with such evil results, if the doctrine be true; but, if one has the curiosity to turn to the citation, he will find that the two sentences quoted have not the slightest reference or bearing upon the subject then under consideration by the court, but that they relates to matters entirely distinct and independent,—general observations, bearing more particularly upon the

duties of legislators in reference to any proposed legislative enactment, when doubts arise in the minds of legislators as to its constitutionality.

Judge Cooley's views in regard to "Judicial Doubts on Constitutional Questions" may be found on page 218 and subsequent pages of the fifth edition of his work. It is needless to add that they are in entire harmony with those expressed by the most distinguished jurists of the country, including former judges of the Supreme Court of the State of Arkansas.

Nor has the case of Rison *v.* Farr, 24 Ark. 161, cited by the court in their opinion, the remotest application to the case and question then before the court.

These are all the authorities which are cited in support of this new and atrocious doctrine, and this is the only answer which the Supreme Court of Arkansas has undertaken to make to the Federal questions which are raised by the complaint of the plaintiff corporation that the Railroad Commissioners have, by their acts and for the reasons set forth in the bill, sought to deprive the plaintiff of its property without due process of law, and denied to it the equal protection of the law.

The remaining part of their opinion is devoted to the question of the constitutionality of the provisions of the Act which prohibit the listing and valuing of embankments, cuts, ties, trestles, or bridges, and the effect of declaring that so much of the Act as relates to those matters is unconstitutional, null and void. But, as none of those questions involve any Federal question, this Court cannot review them upon the writ of error. They can be reviewed, we contend, in the second suit, No. 1078, brought by the trustees under the mortgage in the Circuit Court of the United States; and we shall therefore reserve whatever observations we may wish to make upon other than Federal questions until we reach that part of our argument.

The questions thus far discussed are Federal questions, pure and simple, to which the highest court of Arkansas has given its answer.

It is for this Court now to say whether the answer of the State Court to those questions is sufficient or not, and whether, by their answer, they have not rendered themselves likewise amenable to the charge of having violated the same section of the same amendment. If they have not, it is hard to understand in what possible

way the provisions therein made for the protection of the *citizen* — his life, liberty, and property — can be violated by the judicial department of a State.

III.

The provisions of the Revenue Act of 1883, in so far as they relate to the valuation and assessment and taxation of the "railroad track" as defined in the Act, of railway corporations, deny to such corporations the equal protection of the laws, and deprive the plaintiff corporation of its property without due process of law, inasmuch as the Act provides no mode by which such valuations as made by the Railroad Commissioners may be modified or corrected, or the legality thereof contested: whereas, in the case of individuals, ample provision is made in the Act for the modification and correction of valuations of the properties of individuals, and for contesting the legality of the taxes levied upon them.

We have already shown that, under Section 49 of the Act, the county assessors have no duties to perform in connection with the valuation and appraisal of the "railroad track." Those duties devolve upon the Railroad Commissioners alone. When the valuations as found by the commissioners have been certified to the assessor of each county on the line of the railroad, it is his duty to list it in his book as real estate under Section 47 of the Act; but he has no power whatever to change in any way the valuation as found by the Railroad Commissioners. Nor has the "County Board of Equalization," which is created by Section 80 of the Act, any power to modify the valuations made by the commissioners. They have full power to raise or reduce the valuations made by the county assessors of both the real and personal property belonging to *individuals* and to railway corporations outside the "railroad track" and "rolling stock"; but over the valuations made of these component parts of a railroad as appraised by the commissioners the "County Board of Equalization" has no power, control, or jurisdiction whatever. Nor has any other body or tribunal. All taxes, State, county, city, town, etc., are based and levied upon the valuations and appraisals made by the Railroad Commissioners, as certified to the assessors. (See Sections 80–84 of the Act.)

Again, under Section 80 of the Act, "any party aggrieved by any action of the Board of Equalization may appeal therefrom to

the County Court"; but no right of appeal is given to "railway corporations" from the action of the Board of Railroad Commissioners in valuing their "railroad track."

We contend, therefore, that all the above provisions to which we have referred discriminate against the "railroad track" of railway companies, and that their effect is to deny to such companies the equal protection of the law that is granted to individuals under the Act.

The case at bar differs very materially from the Kentucky Railroad tax cases, 15 U. S. 321, in that, under the Kentucky Act, the railway companies were afforded the opportunity, equally with individuals, in a suit at law for the collection of the tax, to judicially contest the validity of all the proceedings connected with the taxation of their properties.

These provisions also deprive the plaintiff of its property without due process of law.

In the illustration given by Mr. Justice Miller in Davidson *v.* New Orleans, 96 U. S. 104, 105, *supra*, he there states that one of the conditions necessary to the validity of tax-laws within the Fourteenth Amendment is that "*those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice*, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case."

## ARGUMENT IN SUIT NO. 1078.

If the court shall sustain our contention in the preceding suit, that either one or more of the three departments of the government of the State of Arkansas, the executive, the judicial, or the legislative, has violated so much of the first section of the Fourteenth Amendment as inhibits any State from depriving any person of his property without due process of law, or from denying to any person the equal protection of the law, the judgment in that case will determine the judgment to be rendered in the present suit.

But if, on the other hand, the court shall be of the opinion that the Supreme Court of Arkansas has not erred in deciding the Federal questions involved in the preceding suit, then other questions than Federal questions are raised by the present suit, of which this Court can take jurisdiction, sitting in review of the Circuit Court of the United States for the Eastern District of Arkansas.

The defendants plead the judgment and decree rendered by the Supreme Court of the State in bar of the present suit, and also demur generally, by special leave of court, to the bill of complaint.

The plea in bar must be overruled.

First, because the record in the suit in the State Court shows that Federal questions are involved, and this Court alone has final jurisdiction of such questions.

Second, because the parties plaintiff are not the same in both suits, but entirely distinct and independent, to wit: the Little Rock and Fort Smith Railway, in the first suit; while its creditors, *secured by a mortgage executed more than ten years before the judgment and decision were given*, are the plaintiffs in the second suit.

The respective plaintiffs represent distinct interests.

The corporation represents its stockholders; and the mortgage deed, under which the plaintiffs in the second suit derive their title and right to appear here, contains no covenant nor agreement on the part of the corporation to pay the taxes that may be assessed and levied upon its properties.

The trustees under the mortgage represent all the holders of the bonds issued under the mortgage. *Non constat* that any of such bond-holders are also stockholders in the corporation.

The corporation, representing its stockholders, brought its suit before the only courts which had jurisdiction over the subject-matter of the complaint; but they were denied the relief which they sought.

If the trustees had acquired their title and their interest in the properties taxed since the decision was rendered, an entirely different question would be presented; and the decision and judgment in the former suit as to all questions other than Federal questions would probably be conclusive upon them. But, as they acquired their title and their interest years ago, such judgment and decision can have no retroactive effect, and preclude them from contesting, in such tribunals as have jurisdiction of the parties and subject-matter, the legality of the taxes which it may be their duty to pay, in order to protect their title and their interests in the properties taxed.

I.

Aside from the Federal questions involved, the bill of complaint of the trustees presents a case over which a court of equity has jurisdiction, and the plaintiffs and defendants are citizens of different States.

Va. Coupon Cases, 114 U. S. 295, 303.
Allen *v.* B. & O. R.R. Co., 114 U. S. 114.
Cummings *v.* Nat. Bank, 101 U. S. 153.

II.

The judgment and decision of the State court in respect to the constitutionality of the provisions of the Act relating to the valuation and assessment of the "railroad track," as defined in the Act of 1883, and also as to the effect of declaring such provisions to be unconstitutional, is not binding or conclusive upon this Court. It still has the power to examine the grounds upon which such decision was based, and to either sustain or overrule the decision.

The question is not one of power or jurisdiction, but of judicial discretion on the part of this Court.

A.

As to the constitutionality of the above provisions.

It would be mere affectation of learning to undertake to cite the almost innumerable decisions of this Court as to the conclusiveness upon this Court of decisions by State Courts in relation to the construction of their own constitutions and laws, and to try to reconcile all the different views which, from time to time, have been expressed upon that subject.

The true doctrine is well stated by Mr. Justice Bradley in Burgess *v.* Seligman, 107 U. S. 20, who closes his statement with the following remark, to wit: —

"As, however, the very object of giving to the national courts jurisdiction to administer the laws of the States in controversies between citizens of different State was to institute independent tribunals, which it might be supposed would be unaffected by local prejudices and sectional views, it would be a dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication."

Now, the decision by the State court in regard to the constitutionality of the provisions of the Act relating to the valuation and assessment of the "railroad track" of railway corporations is one strictly of first impression. It will be found difficult, in fact, to understand precisely what the majority of the court did decide upon this subject or upon what grounds their conclusions are based, for the reason that their various propositions are stated hypothetically, and not directly, positively, or absolutely.

The Chief Justice of the court evidently did not consider that the provisions of the Act above referred to were unconstitutional, null and void; for he says, p. 24 of the record in suit 1077:—

"It is proper to presume that the law-makers who passed the Act in question knew the limitation of their power, and intended to keep within the bounds pointed out to them by the constitution. If the proviso which excludes from the return for assessment to be made by the companies the value of embankments, tunnels, cuts, etc., was intended as an exemption from taxation of a part of the real estate, it would be inoperative, as we have seen. *But it does not appear to be necessary so to construe the Act, and deference to a co-ordinate department should impel us to put that construction upon it which is consistent with the duty that was incumbent upon them to perform in its passage.*"

Nor do the majority of the court decide that the provisions in question are to be construed as an attempt on the part of the legislature to exempt property from taxation. The first proposition they establish, as we have already shown, is that "officers of the executive department are not bound to execute a legislative act, which, in their judgment, is repugnant to the constitution."

Having proved the truth of this proposition to their own satisfaction, the court then proceed to examine the constitutional provisions in regard to the valuation and taxation of properties throughout the State. Their argument is that tunnels, tracks, substructures, superstructures, etc., are property,— "the *private property of the stockholders*"; and being property, they say, it must be taxed, because "all property is to be taxed according to its value." But this is not what the Constitution says. It reads "shall be taxed according to its value, *that value to be ascertained in such manner as the General Assembly shall direct*, making the same equal and uniform throughout the State." The court then says: "The legislature cannot discriminate between different classes of property in the imposition of taxes. The only discretion

with which it is invested is in the ascertainment of values, so as to make the same equal and uniform throughout the State."

The presumption is that that is the very reason why the legislature provided the very mode which they did provide for valuing the "railroad track" of railway corporations for purposes of taxation, the component parts of such tracks, as defined in the Act, being properties, if properties at all, of a very peculiar and unique character. And the Court admit in the first paragraph on page 57 of the record in suit No. 1078 that the Legislature had power to provide that the valuation of "railroad tracks" should be made by the Board of Railroad Commissioners. The *rate of taxation* which is fixed by other officers, does not depend upon the valuations made by the commissioners. All the taxes are levied by other officers, and, after the valuations and assessments of all other properties have been made, returned, and equalized, the rate of taxation is ascertained. No discrimination, therefore, "in the imposition of taxes" is made in favor of "railroad tracks." The true doctrine is well stated by this Court in the Kentucky cases, 115 U. S. p. 337:—

"There is nothing in the constitution of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality in respect to the subject only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the *methods* and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the legislature has seen fit to impose." And, again, on p. 339: "The right to classify railroad property as a separate class for purposes of taxation grows out of the inherent nature of the property, and the discretion vested by the constitution of the State in its legislature, and necessarily involves the right, on its part, to devise and carry into effect a distinct scheme, with different tribunals, in the proceeding to value it. If such a scheme is due

process of law, the details in which it differs from the mode of valuing other descriptions and classes of property cannot be considered as a denial of the equal protection of the laws."

The railway corporation incorporated in its bill of complaint verbatim the first paragraph above quoted, and cited the case from which it was taken, in order that its contention in regard to the constitutionality of the provisions in dispute might be stated as clearly as possible.

None of the cases cited by the State Court have any bearing upon this particular point.

Now, this is *all* that the Supreme Court of Arkansas has to say upon the subject of the constitutionality of the provisions of the Act referred to. Having decided that "officers of the executive department are not bound to execute a legislative act which, in their judgment, is repugnant to the constitution," they, unconsciously, but evidently, felt the pressure upon them and the necessity of taking the next step; namely, that of upholding and sustaining the conclusions which the Railroad Commissioners had promulgated in regard to the constitutionality of the provisions of the Act relating to the valuation of the "railroad track," as defined in the Act.

It is not our intention to make any extended argument in support of the constitutionality of the provisions of the Act now under discussion. Our views in regard to that subject are fully set forth in so much of the fifth paragraph of the bill of complaint, in suit 1078, as may be found on pages 6 and 7 of the printed record, and in paragraph 6, pages 9 and 10.

We simply desire to remark that taxation of railroads in Arkansas has existed only a very few years, for the simple reason that those which were first built were exempt from taxation. It was not until 1875 that the first experiment was tried under the Revenue Act of 1873, which was the first law enacted on the subject. A copy of the provisions of this Act, so far as they pertain to railroads, is printed in the Appendix to this brief.

This system of taxation not proving satisfactory either to the State or to the railway companies, the legislature, upon the suggestion and recommendation of the Governor of the State, in 1879 so amended some sections of the Act of 1873, and repealed others, as to make a system of taxation of railroads which was based upon the net receipts of each company for the year ending December

31, next preceding, with the proviso that such net receipts in any one year should not be less than twenty-five per cent. of the *gross* earnings.

A copy of this Act may also be found in the Appendix to this brief.

This Act regulated the taxation of railroads until the entire Revenue Acts of the State were revised by the Act of March 31, 1883.

Undoubtedly, the controlling reason in the minds of legislators for inserting the provisions in regard to embankments, cuts, ties, tunnels, trestles, and bridges, was this. In the eastern part of the State, a very large part of the lands, particularly those bordering upon the Mississippi, and streams emptying into that river, is swampy and subject to overflow. This is more especially true in times of high water in the Mississippi, when back water sets in, in its tributaries. Hence, on one line of railroad, the trestle-work through these bottom lands varies, or has varied, in length from one mile to upwards of twenty miles, *continuously*.

Again, in the western part of the State, where the so-called Boston and Ozark range of mountains is piled up, one railroad has been compelled to tunnel through the mountains in different places, one of which tunnels is about a mile in length.

Again, another railroad runs diagonally through the State at hardly perceptible grades, with no mountains or even hills to climb or tunnel, and no overflowed lands to cross.

Now, it is evident that the only possible way or system by which, for instance, these three different railroads can be put on an equality in reference to taxation is to eliminate the elements which enter most largely into the original cost of construction, and the daily cost of maintenance of way; and those elements are the very elements which the legislature, by the forty-sixth, forty-seventh, and forty-ninth sections of the Act, prescribe shall not be taken into the account. To hold that such provisions shall be construed as an attempt on the part of the law-making power to evade a constitutional inhibition, instead of a lawful and probably wise exercise of legislative discretion, when such is the natural and simple meaning of the provisions, is to violate all the rules of presumption which attach to legislative Acts, and to substitute judicial for legislative discretion.

The case on this point is clearly in harmony with the decision in the Kentucky Railroad tax cases, *supra*.

It is for this Court to say whether such "imperative reasons" as are referred to by Mr. Chief Justice Waite in Railway Companies *v.* Schutte, 103 U. S. 118–139, do not exist in this case as to compel the Court to disregard the decision of the State Court upon the question as to the constitutionality of these provisions of the Act and to consider the question as one over which this Court has original jurisdiction. This will be more apparent when the conclusions reached by the State Court as to the effect of their decision on this point are considered.

B.

The only question remaining to be discussed is as to the effect on the statute of the decision that the foregoing provisions are unconstitutional, null and void.

The Supreme Court of the State say, "The clause of Section 5649," or Section 46 of the Act, "*may be stricken out without detriment to the remainder of the Act and the consistency of its parts.* It is useless and unnecessary in any view; and, construed as providing for an exemption, it is ineffectual and mischievous."

Undoubtedly, in the opinion of the Railroad Commissioners and the Supreme Court of the State, the clause in question "is useless and unnecessary"; but it is or ought to be of great benefit to the railway corporations, if those provisions of the Act are interpreted and administered in accordance with the intent and meaning of the law-making power.

It must be conceded that the intent and meaning of the Decalogue would not be more completely reversed by striking out the word "not" from the various prohibitions therein contained than the intent and meaning of the legislature which enacted this law has been reversed by the decision of the Supreme Court of the State. The change in each case is wrought by striking out the word "not," which turns an inhibition *not* to do a certain act into a positive command to *do it.*

The plaintiffs contend that the construction given by the State Court changes the whole scheme of taxation provided for by the Act, at least so far as relates to the valuation and taxation of the "railroad track" of railway corporations, and substitute Judicial legislation for that of the law-making power.

They also claim that the *effect* of such construction is either to leave the "railroad track" not subject to taxation, or else subject to taxation only under the Act of 1879.

Now, the effect which is to be given to an Act when a part of it is held to be unconstitutional, null and void, is clearly one over which this Court can exercise an independent judgment, without reference as to how that question may have been decided by the State Court; for it is a question which falls within "the domain of general jurisprudence."

It requires no argument to show that the citation which the State Court make from Cooley's Constitutional Limitations, p. 177, as sustaining their decision, so far from supporting it, is a direct authority for our contention that the entire scheme for taxing the "railroad track" under such a construction must fail. This would have perhaps been apparent to the State court itself, if, instead of ending their quotation where they stopped, they had included the very next succeeding sentence, to wit: "*But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail, unless sufficient remains to effect the object without the aid of the invalid portion.*"

Here we have this exact case. The provisions in Sections 46, 47, and 49 of the Act relate entirely and exclusively to the valuation and assessment of the "railroad track" of railway corporations. Their purpose was to provide for that sole object. Some of those provisions the State court decide are void, and nothing remains except provisions which not simply nullify and defeat, but completely reverse, the entire scheme of the legislature in relation to this subject.

This case falls within the rule laid down in this Court in

Trade Mark Cases, 100 U. S. 82, reaffirmed in Virginia Coupon Cases, 114 U. S. 269.
Presser *v.* Illinois, 116 U. S. 252.

*We respectfully submit that it is beyond the power of the judiciary thus to legislate and to enact that a mode of valuation, expressly prohibited by the legislature, can be substituted for the mode in express terms prescribed by the legislature.*

It is to be observed that the moneys which the plaintiff trustees have paid into court have been paid upon the express conditions that

the provisions of the Act which the State court have held to be unconstitutional, null and void, are finally decided to be a legitimate exercise of legislative powers, and upon the further condition that, if those provisions are finally adjudged unconstitutional, the trustees offer to pay out of such funds only such taxes as may be found due under the Act of 1879.

C. W. HUNTINGTON,

*Of Counsel with Plaintiff in Error and Appellees.*

# APPENDIX.

## Provisions of Revenue Act of 1873 relating to Taxation of Revenue, as contained in Gantt's Digest.

Sec. 5098. The county clerks of the several counties of this State in which any railroad company now has or hereafter may have its track and roadway, or any part thereof, shall, on the first Tuesday in June of each year, proceed to ascertain the value of all personal property, moneys and credits of such company, and appraise the same at its true value in money. The clerk of the county in which said railroad company has its principal office, if such principal office is in this State, and if not in this State, then the clerk of the county having the largest city or village upon the line of said road, shall be the president of said board, and shall notify the proper county clerks at least five days before the time appointed for such meeting. In the absence or inability of the president of the board, they shall appoint one of their own number president *pro tem.* A majority of such county clerks shall constitute a quorum, and a majority of those present at any meeting having a quorum shall decide all questions submitted. Each board shall appoint one of its members secretary, and full minutes of its proceedings shall be kept. *Ib., sec.* 30.

Sec. 5099. Such boards shall have power to require from the president, secretary, receiver and principal accounting officer of such road a detailed statement, under oath, of all the rolling-stock and items and particulars constituting such property, moneys and credit, and the value thereof, and may examine the books and papers of such road, and any or all of its officers, receivers, servants or agents, under oath, touching any matter relating to the same, and any county clerk present at such meeting is authorized and empowered to administer such oath. In ascertaining the value of the personal property of any railroad, the road-bed, water and wood stations, and such other realty as is necessary to the daily running operations of the road, shall be treated and estimated by said board as personal property. *Ib., sec.* 31.

Sec. 5100. Any president, secretary, receiver, accounting officer, servant or agent of any railroad company having any portion of its roadway in this State who shall refuse to attend before the proper board of appraisers and assessors when required so to do, or refuse to submit to the inspection of said board any books or papers of such railroad company in his possession, custody or control, or shall refuse to answer such questions as may be put to him by said board or its order touching the business, property, rolling-stock, moneys, credits, road-bed, water and wood stations, or other prop-

erty, and the value thereof, of said railroad company, shall be deemed guilty of contempt of such board, and may be confined, by order of said board, in the jail of the proper county, until he shall comply with such order and pay the costs of his imprisonment. *Ib.*, *sec.* 32.

SEC. 5101. The value of such property, moneys and credits of any railroad company, as found and determined by such board, shall be apportioned by said board among the several counties through which said road, or any part thereof, runs, so that to each county, and to each city, incorporated village, township and district, or part thereof therein, shall be so apportioned as shall equalize the relative value of the real estate, structures and stationary personal property of such company therein in proportion to the whole value of the real estate, structures and stationary personal property of such railroad company in this State; and so that the rolling-stock of such company shall be apportioned in the same proportion that the length of such road in said county bears to the entire length thereof in all said counties or county, and to each city, incorporated village, township and district, or any part thereof therein interested, the amount apportioned to his county; and it is hereby made the duty of the county clerk to apportion the amount so found for his county, to the cities, incorporated villages, townships, districts, or part thereof, in accordance with the provisions of this act. *Ib.*, *sec.* 33.

SEC. 5102. When any railroad company has part of its road in this State and a part thereof in any other State or States, the proper board shall take the value of such property, moneys and credits of such company so found and determined as aforesaid, and divide it in the proportion the length of such road in this State bears to the whole length of such road, and determine the principal sum for the use of such road in this State accordingly, equalizing the relative value thereof in this State as provided in the preceding section. Any railroad company having its road, or any part thereof, in one county only, the clerk of said county shall discharge and perform all the duties herein provided for the assessment of the property of railroads. *Ib.*, *sec.* 34.

## AN ACT

Entitled, An Act to Amend Sections 5,098, 5,099, 5,100, 5102, and to Repeal Section 5,103, of Gantt's Digest.

*Be it enacted by the General Assembly of the State of Arkansas:*

SECTION 1. That section 5,098, of Gantt's Digest, be so amended as to read as follows, to wit: Section 5,098 — The Board of Railroad Commissioners of this State, created by, and described in section one, of an act approved March 10th, 1887, entitled, "an act filling vacancies in Board of Railroad Commissioners in the State," shall on the first Tuesday in June of each year proceed

to ascertain the value of all personal property, including road-bed, water, wood-stations, passenger and freight depots, offices, furniture, and such other property, real and personal, as is necessary to the daily running operations of each of the railroad or railway companies, having existence under the laws of this State, or operated in whole or in part therein, together with all moneys and credits of such companies, and appraise the same according to its value. That value to be ascertained in the following manner: The said board shall ascertain the nett earnings of each of said companies, for the year ending 31st day of December, last preceding the date of said appraisement, and shall appraise the value of such property with reference thereto. That the nett earnings thus ascertained, shall be the assessed value of said property, and be taxed accordingly; *provided*, that the nett earnings shall not be less than twenty-five per cent. of the gross receipts from said daily operations within said period; this method of assessment to be and remain in force for the period of ten years from and after the passage of this act. That nothing herein, shall be construed to apply to any property, real or personal, belonging to any railroad company, not necessary to the daily running operation of said railroad. Said board, in arriving at the true value in money, of all the railroad property, both real, personal and mixed, in this State, shall take into consideration the very equity of the case existing between all the citizens of the State and said railroad company or corporation, without discriminating against or in favor of said railroad company or corporation.

SEC. 2. Section 5,099, of Gantt's Digest, shall be so amended as to read as follows: Section 5,099 — Such board shall have power to require from the president, secretary, receiver and principal accounting officers of said companies, or from either of said officers, a detailed statement of such nett earnings, and the items and particulars constituting the same, and may examine the books and papers of such companies and any or all of its officers, receivers, servants, or agents, under oath touching any matter relating to the same, and any member of said board present, shall have power and is hereby authorized to administer all such oaths. In ascertaining the value of the personal property of any of said companies, the road-bed, water and wood stations, passenger and freight depots, offices, and such other realty as is necessary to the daily running operation of such roads, shall be treated and estimated by said board as personal property.

SEC. 3. That section 5,100, of Gantt's Digest, shall be amended so as to read as follows: Section 5,100 — Any president, secretary, receiver, accounting officer, servant or agent of any of said companies who shall refuse to attend before said board when required to do so, or refuse to submit to the inspection of said board, any books or papers of such company in his possession, custody or control, or shall refuse to answer such questions as shall be put to him by said board or its order touching the business, or earnings of said company, shall be deemed guilty of a contempt of said board,

and may be confined by order of said board in any County Jail in the State, until he shall comply with such order, and pay the costs of his imprisonment.

SEC. 4. That section 5,102, of Gantt's Digest, be amended so as to read as follows: Section 5,102 — When any railroad or railway company has part of its road in this State and a part thereof in any other state or states, the said Board of Railroad Commissioners shall take the value of such property, moneys, and credits of such companies, so found and determined as aforesaid, and divide the same in the proportion the length of such road in this State, bears to the whole length of such road, and determine the value of the property of said road in this State, accordingly equalizing the relative value thereof, among the counties through which it runs in this State, according to the preceding section.

SEC. 5. That section 5,103, and all acts, and parts of acts, in conflict with this act, be, and the same are hereby repealed, and this act to take effect from and after its passage.

Approved March 8, 1879.

## AN ACT

### To Revise and Amend the Revenue Laws of Arkansas.

*Be it enacted by the General Assembly of the State of Arkansas:*

SECTION 1. The term "real property and lands" wherever used in this Act shall be held to mean and include, not only the land itself, whether laid out in town lots or otherwise, with all things therein contained, but also all buildings, structures and improvements and other fixtures of whatever kind thereon, and all rights and privileges belonging, or in any wise appertaining thereto.

The term "investment in bonds" wherever used in this Act shall be held to mean and include all moneys invested in bonds of what ever kind, or certificates of indebtedness commonly called scrip, whether used by incorporated or unincorporated companies, towns, cities, townships, counties, States, or other corporations, held by persons residing in this State, either by themselves or by others for them, whether for themselves or as guardians, trustees, or agents.

The term "investment in stocks" wherever used in this Act shall be held to mean and include all moneys invested in public stocks of this or any other State, or in any association, corporation, joint stock company or otherwise, the stock or capital which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this Act, held by persons residing in this State, either by themselves or as guardians, trustees or agents, or by others for them.

The term "oath" wherever used in this Act shall be held to mean oath or affirmation. Every word in this Act importing mascu-

line gender, shall extend and be applied to females as well as males, and the word "person" as used in this Act shall be held to mean and include firm, company and corporation.

The term "personal property" wherever used in this Act shall be held to mean and include:

*First:* Every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming a part of any parcel of real property as hereinbefore defined.

*Second:* The capital stock, undivided profits, and all other means not forming part of the capital stock, of every company whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means by whatsoever name the same may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel, or boat of whatsoever name and description, used or designed to be used exclusively or partially, in navigating any of the waters within or bordering on this State, whether such ship, vessel or boat shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any collector's district of this State, or not

The term "money" or "moneys" wherever used in this Act shall be held to mean and include, gold and silver coin, and bank notes of solvent banks in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw in money on demand, within this State or elsewhere, provided the same is subject to order.

All citizens of this State shall, when they give to the Assessor a list of their personal property, moneys and credits, state under oath whether they have any such deposits, balances or account, or otherwise, and the amount of such deposits, balance or otherwise on account.

The term "credits" wherever used in this Act shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or service due, or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this State, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal *bona fide* debts owing by such person; in making up the sum of such debts owing, there shall be taken into account no obligation to any mutual insurance company, nor any unpaid subscription to the capital stock of any joint stock company, nor any subscription for any religious, scientific, literary or charitable purpose, nor any acknowledgment of any indebtedness, unless founded on some consideration actually received, and believed at the time of making such acknowledgment to be a full consideration therefor; nor any acknowledgment of debt made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any lia-

bility as surety than the person required to make the statement of such credits, believes that such surety is in equity bound and will be compelled to pay or contribute.

Pensions receivable from the United States or from any State (salaries or payments excepted) shall not be held to be annuities within the meaning of this Act.

PROPERTY AND PRIVILEGES SUBJECT TO TAXATION.

SEC. 2. All property whether real or personal in this State, all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of persons residing therein, the property of corporations now existing or hereafter created, and property of all banks or banking companies now existing or hereafter created, and of all bankers and brokers, shall be subject to taxation, and such property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose.

SEC. 3. All tracts of land set apart for school or other purposes and donated to the State by the Congress of the United States, for a specific purpose, and sold under the authority of the laws of this State, to any person or persons shall be subject to taxation, as other land in this State immediately after sale; but such lands shall not be sold for taxes until the purchase money therefor shall be fully paid, but shall be returned delinquent as other lands, and the personal property of the purchaser shall be subject to sale to pay the taxes thereon. *Provided*, That until such payment of taxes, or the collection thereof from the personal property, such lands shall be continued on the tax books and the taxes of each year charged thereon and added to the tax and penalty due when the same became delinquent, until payment be made [or] on the lands resold by the proper officer, or authority pursuant to the laws in force for the sale of such lands.

PRIVILEGES SUBJECT TO TAXATION FOR STATE PURPOSES.

SEC. 4. There shall be levied and collected as a State tax, the sum of twenty-five ($25.00) dollars, on each and every hawker or peddler, whether by land or water, for the privilege of hawking and peddling goods, wares and merchandise throughout this State, for the term of six months and less.

There shall be levied and collected as a State tax the sum of one hundred ($100.00) dollars, upon each and every clock peddler, each and every agent for the sale of lightning rods, and stove range agents, doing business in this State for the term of one year or less.

There shall be levied and collected as a tax upon each and every sewing machine company or general agent for the sale of sewing machines doing business in this State for the term of one year or less the sum of two hundred dollars ($200.00); *Provided*, That any

sewing machine company or general sewing machine agent who shall have paid said tax may send his or their employees or such agents into any other county or counties than that in which his or their principal business may be carried on, upon payment of a county tax of five ($5.00) dollars for each employee or sole agent in each of such additional counties wherein such employee or sole agent may be engaged in carrying on any part of his or their said business for the term of one year or less.

There shall be levied and collected, as a State tax, the sum of one hundred ($100.00) dollars, upon each and every traveling agent for any life insurance, mutual endowment, matrimonial, mutual aid, nuptial association or company doing business in this State for the term of one year or less.

There shall be levied and collected as a State tax the sum of three hundred ($300.00) dollars, upon each and every vendor of spirituous, vinous or malt liquors doing business in this State, for the term of one year or less, commencing January 1st, 1884.

Every person wishing to engage in the business of hawking or peddling, peddling clocks, or as agents for the sale of sewing machines, lightning rods, stove ranges or as traveling agent for any life insurance, mutual endowment, endowment matrimonial, mutual aid or nuptial association, or company; or wishing to engage in the sale of spirituous, vinous or malt liquors in this State shall first pay for and take out a license for the privilege of engaging in any business specified in this section of this Act.

Any person who shall engage in the business of hawking or peddling, or in peddling clocks, or as agent for the sale of sewing machines, stove ranges or lightning rods, or as traveling agent for any life insurance, mutual endowment, endowment matrimonial, mutual aid, nuptial association or company, whether incorporated or not, or shall engage in the sale of spirituous, vinous or malt liquors in this State, without having paid the tax as provided in this Act for said privilege, shall be guilty of a misdemeanor, and upon conviction shall be fined in double the amount of license he would be by the provisions of this Act chargeable with.

### Privileges Subject to Taxation for County Purposes.

Sec. 5. In addition to the revenue arising from ferry, dram shops and drinking saloon license, which is hereby appropriated for county purposes, there shall be levied and collected a county tax on the following articles, viz.:

A tax of three dollars on each criminal conviction in courts of record.

A tax of three dollars on each civil suit in courts of record, where a verdict is rendered by a jury.

A tax of fifty cents upon each writ of summons and writ of execution issued out of any of the courts of record of this State; and a tax of fifty cents upon the certificate of record of each instrument

of writing recorded in any recorder's office of this State; and a tax of fifty cents on each marriage license issued. Courts of Justices of the Peace are not courts of record within the meaning of this section.

SEC. 6. There shall be collected as a county tax:

*First:* The sum of twenty-five ($25.00) dollars on each and every hawker or peddler by land or water, for the privilege of hawking and peddling goods, wares and merchandise in any county in this State, for the term of six months or less.

*Second:* The sum of one hundred dollars ($100.00) on each and every circus or menagerie for each day's exhibition given in any county in this State, and fifty ($50.00) dollars for each side show connected therewith.

*Third:* The sum of five ($5.00) dollars for each public exhibition given by any person or persons in any county in this State, any part of the proceeds of which is for his or their personal profit.

*Fourth:* The sum of ten ($10.00) dollars upon each and every auctioneer who follows the business for a profit, for the privilege of selling any lands, goods, wares and merchandise at public outcry in any county in this State, for the term of six months or less.

*Fifth:* The sum of four hundred ($400) dollars upon each and every vendor of spirituous, vinous or malt liquors in any quantity, in any county of this State for the term of one year or less.

SEC. 7. All property described in this section, to the extent herein limited shall be exempt from taxation:

*First:* All public school houses and houses used exclusively for public worship, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit.

*Second:* All public colleges, academies, all buildings connected with the same, and all houses connected with public institutions of learning, not used with a view to profit. This provision shall not hold to leasehold estate, or to real property held under the authority of any college or university of learning in this State.

*Third:* All lands used exclusively as grave yards, or grounds for burying the dead, except such as are held by any person, or persons, company or corporation, with a view to profit, or for the purpose of speculation in the sale thereof.

*Fourth:* All property whether real or personal belonging exclusively to this State or the United States.

*Fifth:* All buildings belonging to counties used for holding courts, for jails or for county offices, with the grounds not exceeding in any county ten acres, on which said buildings are erected.

*Sixth:* All lands, houses and other buildings belonging to any county, city or town used exclusively for the accommodation of the poor.

*Seventh:* All buildings belonging to institutions of purely public charity, together with land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys

and credits appropriated solely to sustaining and belonging exclusively to such institutions.

*Eighth:* All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meeting of fire companies, whether belonging to any town, or to any fire company organized therein.

*Ninth:* All market houses, public squares, other public grounds, town and city houses or halls owned and used exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to said town.

### For County and School Purposes.

Sec. 8. It shall be unlawful for the County Court to levy on the taxable property of the county, in any one year, a greater rate per centum than is in this section authorized, to wit: For all county purposes, not exceeding five mills on the dollar, and for paying indebtedness existing at the time of the adoption of the present Constitution, not exceeding five mills on the dollar; for the support and maintenance of Public Schools in any school district of a county, and to pay existing indebtedness of any such district, such rate not exceeding five mills on the dollar, as may be determined by vote of the qualified electors of such school district.

Sec. 9. That the County Court of each county, composed of the Judge and a majority of the Justices of the Peace of each county, shall meet annually on the first Monday in July, for the purpose of levying the county taxes and making appropriations for the expenses of the county.

Said Court shall determine the amount to be raised for ordinary county purposes; for public buildings; for the support of the poor; for bridges; for roads, and for interest and principal on the county debt.

The Court shall set forth upon the record of proceedings, especially the amount to be raised for each of the above defined purposes.

The clerk of the County Court shall carefully ascertain the amount collected for each purpose under said levy, and it shall not be lawful to use any specific fund for any other purpose than the one for which the same was specifically levied, until the purpose for which such tax was specifically levied shall have been accomplished.

The taxes that may be levied by authority of any law in any township or school district, shall be made and certified by the proper officer or person to the clerk of the County Court before the first Monday in July in each year.

Sec. 10. The amount of taxes levied in any one year by the constituted authorities of any city or town shall not exceed the amount specified in this section, viz.: For all city or town purposes, five mills on the dollar; for paying indebtedness existing at the time of the adoption of the present constitution of the State, not more than five mills on the dollar;

*Provided*, The above limitations shall not be construed to prohibit assessments on property adjacent to local improvements made in any city or town, for the purpose of paying the costs thereof and damages occasioned thereby.

SEC. 11. All levies of taxes in cities and towns shall be based upon the appraisement of the County Assessor, as equalized for the levy of State and county taxes, and placed upon the tax book by the clerk of the County Court, and the same shall be collected in the same manner, and by the same person, that county taxes are collected.

BY WHOM — HOW OBJECTIONS MAY BE MADE TO LEVY OF TAXES.

SEC. 12. Any person having real or personal property assessed for taxation, may appear in person, or by attorney, before the County Court, at the time of the levy of taxes, by it, or at the succeeding term thereafter, and by petition or remonstrance, object to the levy of any specific tax for illegality, and may by sworn petition, set forth and show any facts upon which such illegality rests. If the same be based upon facts, it shall be the duty of the Court to determine both the law and the fact presented, and for that purpose shall hear any testimony offered, and if the Court should rule against the objection so presented, the party so objecting to such levy, may appeal from such ruling to the Circuit Court of the county, and upon giving bond within ten days, with good and sufficient security, in double the amount of specific tax levied upon the property of the party objecting, subject to the approval of the Court, conditioned for the payment of such tax, should it be decided to have been lawfully levied, the same shall operate as a supersedeas of the collection of the same.

*Provided*, That it shall not operate to prevent the same being placed upon the tax book. Said bond shall be given to the State of Arkansas, and in the event such levy shall finally be declared illegal, such judgment shall operate as an acquittal to the collector and his securities for the non-collection of the tax. If the tax be finally declared legal, the collector shall immediately proceed to collect the same as in other cases, or by action on the appeal bond; and, *provided further*, that any tax payer feeling himself aggrieved by any such levy, may, at any time before the returning of delinquent taxes by the collector for that year, appeal, as hereinbefore provided. Any person interested in the levy of such tax may resist such petition to prevent a levy, either before the County Court, or in the Circuit Court on appeal. In all cases where an appeal is taken the clerk of the County Court shall enter on the tax books, opposite the name of the party, or tract, or lot of land, the supersedeas of such specific tax.

The County Court shall employ counsel to attend before it at the hearing, and should the same be appealed to the Circuit Court, the

Prosecuting Attorney, and if to the Supreme Court, the Attorney General, shall appear in the interest and behalf of the levy of the tax: *Provided*, that the real or personal property upon which such illegal specific tax, as alleged to have been levied shall not be withheld from sale on account of any taxes for any purpose, due or to become due upon the same, and which has not been paid as provided by law, and against the collection of which no petition has been filed.

PROPERTY — WHEN, BY WHOM, AND HOW LISTED.

SEC. 13. Every person of full age and sound mind, shall list the real property of which he is the owner, situated in the county in which he resides, the personal property of which he is the owner, and all money in his possession; and he shall list all moneys invested, loaned or otherwise controlled by him, either for himself or as agent, attorney or on account of any other person or persons, companies or corporations whatsoever, and all moneys deposited, subject to his order, check or draft and credits due from or owing by any person or persons, body corporate or politic, whether in or out of said county or State.

SEC. 14. If any person shall have converted moneys, credits or other personal property in the year preceding the first Monday in February of the year in which he is required to assess his property, into bonds or other securities of the United States, or this State, not taxed, and shall hold or control such bond or securities, when he is required to list his property, he shall list the monthly average value of said moneys, credits or other property held or controlled by him: *Provided*, that any indebtedness of said person or of persons represented by him, created by investments in said bonds, or other securities, shall not be deducted from the amount of credits in making up his list for taxation.

SEC. 15. No person shall be required to list a greater portion of any credits than he believes will be acquired or can be collected, nor any greater portion of any obligation given to secure the payment of rent than the amount of rent that shall have accrued on the lease, and shall remain due and unpaid at the time of listing; and no person shall be required to include in his statement, as a part of the personal property, moneys, credits, investment in bonds, stocks, joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock, or property, of any company or corporation, which is required to list, or return its capital and property for taxation in this State.

SEC. 16. The property of every ward shall be listed by his guardian; of every minor, idiot, or lunatic, having no other guardian, by his father if living, if not by his mother, if living, and if neither father nor mother be living, by the person having such property in charge; of every wife, by her husband, if of sound mind, if not, by herself, if she be of sound mind; of every person for whose benefit

property is held in trust, by the trustee; of every estate of a deceased person, by the executor or administrator; of corporations whose assets are in the hands of receivers, by the receiver; of every company, firm, body politic, or corporate, by the president or principal accounting officer, partner or agent thereof.

SEC. 17. Every person required to list property on behalf of others, shall list it in the same township or school district in which he would be required by law to list if such property was his own, but he shall list it separately from his own, specifying in each case the name of the person, estate, company or corporation to whom it belongs; and all real property and merchants and manufacturer's stock, and all the articles mentioned in section twenty (20), of this Act, and all personal property, farms, and real property, not in towns, shall be returned for taxation and taxed in the township, city, or town, or school district in which it is situated (all shares of stock in any national bank located in this State, whether held and owned by residents or non-residents of this State, shall be listed for taxation and taxed in the city, town, township or school district, in which the bank is located), and all other personal property, moneys, credits, or effects, shall be entered for taxation in the township, school district, city or town in which the person to be charged with the taxes thereon resided at the time of listing the same by the Assessor, if the person resides in the county in which such property, moneys and effects were listed, if not, then such property, moneys and effects shall be entered for taxation and taxed in the town, township or school district where it was situate when listed.

SEC. 18. Property held under a lease for a term exceeding ten years, belonging to the State, or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, and school, seminary, saline or other lands, shall be considered for all purposes of taxation, as the personal property of the person holding the same, and shall be listed as such by such person or his agent, as in other cases.

SEC. 19. Each person required to list property shall make out and deliver to the assessor, a statement, verified by his oath or affirmation, of all the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, in his possession or under his control on the first Monday in February of each year, and which he is required to list for taxation, either as a holder or owner thereof, or as a guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. Said oath shall be in the following form:

"I . . ., do solemnly swear (or affirm) that the list of property, with its value as now rendered by me, is a just and true account of all the property I am required by law to render as subject to taxation in my own name or right, or that of any other person for whom I ought to list taxable property; that I have estimated and put down the value of such property, not at what it might sell for at forced sale, but at what would be its fair market value, so help me God."

And if any such tax payer shall wilfully neglect or refuse to deliver such list on oath, to the assessor, he shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed one hundred dollars ($100), and be confined in the county jail for a period not to exceed three months, or either.

The assessor shall furnish to the proper prosecuting attorney, the names of all persons so wilfully refusing to give in such sworn list of their property, and said prosecuting attorney shall present the same to the grand jury.

And the assessor shall not take a list of taxable property from any person without administering to such person the oath in this section provided; and any assessor who shall violate this provision shall be guilty of a nonfeasance in office, and upon a conviction thereof shall be fined in any sum not less than ten ($10) nor more than fifty ($50) dollars, and each failure so to do shall constitute a separate offence: *Provided*, such oath may be made before any officer authorized to administer oaths.

SEC. 20. Such statement shall truly and distinctly set forth:

*First:* The number of horses and value thereof.

*Second:* The number of neat cattle and value thereof.

*Third:* The number of mules and asses and value thereof.

*Fourth:* The number of sheep and value thereof.

*Fifth:* The number of hogs and value thereof.

*Sixth:* Every carriage or wagon of whatsoever kind and value thereof.

*Seventh:* Every gold and silver watch, or watches of any other metal, diamonds and jewelry of every kind and value thereof.

*Eighth:* Every piano forte and the value thereof.

*Ninth:* The value of the goods and merchandise which such person is required to list as merchant.

*Tenth:* The value of the property which such person is required to list as a banker, broker or stock jobber.

*Eleventh:* The value of the materials and manufactured articles which such person is required to list as a manufacturer.

*Twelfth:* The value of moneys and credits required to be listed, including all balances of book accounts, in or out of this State.

*Thirteenth:* The value of the money invested in bonds, stocks, joint stock companies, or otherwise which such person is required to list.

*Fourteenth:* The value of moneys, credits, or other personal property converted into bonds, or other securities of the United States or of this State not taxed, in the year preceding the first Monday in February, which bonds or securities were on said first Monday in February in the possession or under the control of the person making such conversion.

*Fifteenth:* The total value of all other articles of personal property which such person by this Act is required to list.

SEC. 21. If there be no articles of personal property, moneys or credits, investment in bonds, stock, joint stock companies or other-

wise which such person would be required by this Act to list on his own account, or on account of others, he may set forth such facts to the assessor, who shall require the oath or affirmation of such person of the truth of the same; said oath shall be in the following form:

I —— ——, do solemnly swear that I was not, on the first Monday in February last, possessed of personal property, moneys, credits, investment in bonds, stocks, joint stock companies or otherwise of any character or description, and that I have not under my charge, control or management, any personal property, money, credits, investment in bonds, stocks, joint stock companies or otherwise of any character or description. And that I have not under my charge, control or management any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, belonging to any other person, that was subject to taxation on the first Monday in February last, that have not been listed and appraised for taxation, either in or out of this State, and that I have not invested in non-taxable securities for myself or others.

Sworn and subscribed to before me this —— day of —— 18—.

—— ——, Assessor.

SEC. 22. The assessment of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and the valuation of all lands, lots and new structures which have not been previously valued and placed upon the tax books, shall be made between the first Monday in February and the thirtieth (30th) day of April of each year.

SEC. 23. Personal property of every description and credits shall be assessed in the name of the person who was owner on the first Monday in February in the year in which the assessment was made.

SEC. 24. All lands and town lots sold for the payment of taxes shall be thereafter assessed in the name of the purchaser.

SEC. 25. It is hereby made the duty of every person seized or holding lands, as mentioned in this Act, to list the same for taxation with the assessor as prescribed in section twenty-two (22) of this Act, on or before the first Monday in June, after the same shall be subject to taxation, and in case of neglecting to list the same as aforesaid, the clerk of the county court shall, when listed, charge upon each tract so neglected to be listed the taxes for each year the same shall have been omitted after becoming liable for taxation, together with ten per centum penalty on each year's taxes, in addition to the taxes of the current year.

### MERCHANDISE.

SEC. 26. Any person owning or having in his possession, or under his control, within this State, with authority to sell the same, any personal property purchased with a view to its being sold at a

profit, or which has been consigned to him from any place out of this State, to be sold within the same, shall be held to be a merchant for the purpose of this Act.

Such property shall be listed for taxation and in estimating the value thereof the merchant shall take the average value of such property in his possession, or under his control, during the year immediately preceding the first Monday in February of the year in which the assessment is made; if he has not been engaged in the business for one year, then he shall take the average value during such time as he shall have been so engaged, and if he be compelled to take the value of the property at the time of the assessment.

SEC. 27. Each merchant in giving in a list of value of personal property as provided in the preceding section shall include in said valuation all good balances of account on his books, and all notes of their true value in money, and said list shall be rendered under oath as prescribed by this Act in cases of personal property.

### MANUFACTURERS.

SEC. 28. Every person who shall purchase, receive or hold personal property of any description for the purpose of adding to the value thereof by process of manufacturing, refining, rectifying, or by combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall make out and deliver to the assessor a sworn statement of the amount of his other personal property subject to taxation; also including in his statement the average value estimated, as provided in section twenty-six (26), of all articles purchased, received or otherwise held for the purpose of being used in whole or in part in any process or operation of manufacturing, combining rectifying or refining, which from time to time he shall have on hand during the year next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged. Every person owning a manufacturing establishment of any kind, and every manufacturer shall list as a part of his manufacturers' stock the value of all engines and machinery of every description, used or designed to be used for the aforesaid purpose.

### BANKS, BROKERS AND STOCK JOBBERS.

SEC. 29. Every corporation, company, individual person or association of persons, whether authorized by law to issue notes for circulation or not, that shall keep an office, counting house, or other place for the transaction of business in this State, and shall discount, buy or sell or exchange notes, bonds, stocks, certificates of public debt, or other evidences of debt, claims, or demands with a view to profit, shall be deemed a bank within the meaning of this Act.

SEC. 30. Every bank shall annually on the first Monday in

March in each year make out and deliver to the assessor a correct statement attested by the oath of the president and cashier of such bank, or if there be no president or cashier then by the oath of the principal manager and principal accountant of such bank, setting forth,

*First:* The amount of capital, whether divided into shares or not, actually paid in or secured to be paid by note or otherwise, or in any manner procured or furnished, to be employed in its banking business.

*Second:* The amount of undivided profits arising from such business belonging to the bank, whether in its possession, or subject to its control, or loaned or otherwise invested for its benefit.

*Third:* The value of moneys, credits or other personal property converted into bonds or other securities of the United States, or of this State, not taxed in the year immediately preceding the first Monday in February of the year in which the assessment is made, and which said bonds or securities on said first Monday in February were in the possession or control of such bank.

*Fourth:* The amount loaned to or deposited with such bank for a term certain, or which by agreement or understanding between the parties is not to be withdrawn on demand, excepting the amount which may have been deposited with any bank established as a clearing house, for the redemption of the notes of banks making such deposits, and on which no interest is charged or received by the bank making such deposit.

Which several amounts shall truly represent the condition of the means, property and assets of the bank described herein, as they shall have existed on the first Monday in February, and shall be added together, and the gross sum so produced shall be deemed the amount of property employed in banking, for the then current year, by such bank.

The shares of persons in banks taxable by law, that the holders or owners thereof are not required to list in person by the provisions of this act, shall be listed by the president or principal accounting officer or agent thereof, showing the name or names of the person owning or holding the same.

The taxes assessed upon the shares of stock thus listed shall be paid by the corporation, or company, respectively, and they may recover from the owner or owners of such shares the amount of taxes to be paid by them, or deduct the same from the dividend accruing on such shares, and the amount paid shall be a lien on such shares respectively, and shall be paid before a transfer of such stock or shares can be made.

SEC. 31. The assessor shall return to the clerk of the county court the statement described in seetion thirty (30) made by any ban kin his county, and the amount so returned shall be placed upon the tax books of the county and taxed as other personal property in such city, town, ward or school districts as the same may be situate.

SEC. 32. It shall be the duty of every assessor in whose juris-

diction there shall be located any such bank, or banking company, to leave with some proper officer or agent of such bank or banking company, notice to make out and deliver, within ten days, the statement required in section thirty (30) of this act, such notice to be delivered at least ten (10) days before the first Monday in March of each year.

SEC. 33. Each assessor of any county within the limits of which any such bank or banking company may be located, in case any president or cashier, agent or principal accounting officer of such bank or banking company, shall refuse or neglect to make out and deliver to the assessor the statement hereinbefore required, shall as in any other case ascertain the amount of such capital stock, surplus and contingent fund, and undivided profits, and shall return the same to the clerk of the county court, and the amount thus ascertained, with fifty per centum thereto added as a penalty, shall be entered upon the tax book for taxation.

SEC. 34. When any person shall commence or engage in the business of dealing in stocks of any description, or in buying or shaving any kind of bills of exchange, stocks, drafts, bank notes, promissory notes, or other kind of writings obligatory, the average value of whose personal property and moneys intended to be employed in such business, shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the assessor the probable average value of the moneys and other personal property by him intended to be employed in such business, until the first Monday in February next succeeding, and the assessor shall deliver a list thereof to the county clerk, who shall enter the same upon the tax book and extend the taxes thereon as in case of other personal property.

SEC. 35. If any person shall commence or engage in any business as aforesaid, and shall not within thirty (30) days thereafter report to the assessor, and make payment to the county collector as before required, he shall forfeit and pay double the amount of taxes that would be due thereon, as a penalty for such failure, upon the amount returned for taxation by the assessor.

## EXPRESS AND TELEGRAPH COMPANIES.

SEC. 36. Any person or persons, joint stock company, association or corporation conveying to, from, or through the State, or any part thereof, money, packages, gold or silver plate, or other articles by express, not including the ordinary lines of transportation of merchandise and property, shall be deemed to be an express company. And any person or persons, joint stock company, association or corporation engaged in transmitting to, from, through or in this State, telegraphic messages, shall be deemed and held to be a telegraph company.

SEC. 37. Each agent of any express company or telegraph company having its principal office in this State, or in any other State

or county [country] and doing business in this State, shall annually in the month of March make out and deliver to the assessor of the proper county in which such agent has his place of business, a statement verified by the oath of such agent, showing the entire receipts of such agent for the year next preceding the first Monday in February in the year in which such statement is made, for, and on account of such company, including its proportion of gross receipts for business done by such company in connection with lines of other companies outside of the limits of this State. *Provided*, The amount which any express company actually pays to railroads or steamboats within this State for the transportation of their freight upon the money packages, gold and silver plate or other articles, to or from the point at which such agent is located, may be deducted from the gross receipts of such company as above ascertained, and the balance thus found, as to express companies, and the gross receipts as above ascertained for the telegraph companies shall be by such assessor listed and assessed as personal property.

SEC. 38. The office furniture and other real and personal property of telegraph and express companies, shall be assessed in the county, city or town where the same is used or kept, in like manner as other real and personal property in such county, city or town is assessed.

SEC. 39. Any agent of such express or telegraph company willfully neglecting or refusing to make out and deliver to the proper assessor such statement, during the month of March, as by this Act required, shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty dollars ($50) nor more than five hundred dollars ($500), and imprisonment not less than thirty days nor more than six months. And said assessor shall from the best evidence obtainable ascertain the amount of the receipts of such agent, and enter the same upon the assessment roll, with fifty per centum penalty thereon.

### PAWN BROKERS.

SEC. 40. Every person or company engaged in the business of receiving property in pledge, or as security for money or other things advanced to the pawner or pledger, shall annually, at the time by this Act prescribed for the assessment of personal property, return, under oath, all property pledged to and held by him as a pawn broker, to the assessor of the proper county, who shall list and assess the same to such pawn broker at its fair cash value.

### MUTUAL LOAN, BUILDING, GAS, TELEPHONE, WATER, AND OTHER CORPORATIONS AND ASSOCIATIONS, OTHER THAN RAILROAD, TELEGRAPH OR EXPRESS COMPANIES.

SEC. 41. The shares of stocks of mutual loan and building associations shall be assessed at their cash value, but only the unre-

deemed shares of such stock or those not transferred to the associations shall be taxed, and such unredeemed shares shall be listed in the name of the individual owners thereof.

SEC. 42. Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction and all other companies, corporations or associations, incorporated under the laws of this State, or under the laws of any other State, and doing business in this State, other than insurance companies and the companies and corporations whose taxation is in this Act specifically provided for, in addition to the other property required by this Act to be listed, shall, through their president, secretary, principal accounting officer or agent, annually, during the month of March, make out and deliver to the assessor of the county where said company or corporation is located or doing business, a sworn statement of the capital stock, setting forth particularly:

*First:* The name and the location of the company or association.

*Second:* The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

*Third:* The amount of capital stock, [stock] paid up, its market value, and if no market value then the actual value of the shares of stock.

*Fourth:* The total amount of all indebtedness, except indebtedness for current expenses, excluding from such indebtedness the amount paid for the purchase or improvement of the property.

*Fifth:* True valuation of all the tangible property belonging to such company or corporation; such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts.

SEC. 43. The assessor shall, annually, at least ten days before the 28th day of February, deliver to the president, secretary, accounting officer or agent of any such company, corporation or association located in or doing business in such county, a notice in writing to return such schedule by the 31st day of March next ensuing. Any president, secretary, principal accounting officer, or agent of any such companies or corporations, upon whom such notice shall have been served, wilfully neglecting or refusing to make such return by the 31st day of March, next, ensuing, after delivery of said notice, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars ($100), or imprisoned not exceeding three months, or both, and the assessor shall, from the best information he can obtain, make out and enter upon the proper assessment roll a list with the valuation of all tangible and intangible property belonging to such defaulting company or corporation, subject to taxation by the provisions of this Act, with fifty per cent. penalty.

### RAILROAD COMMISSIONERS.

SEC. 44. The Governor, Secretary of State and Auditor of Public Accounts shall be and are hereby constituted a Board of Railroad

Commissioners for this State. And on the first Monday in April in each year shall proceed to ascertain the value of all property, including railroad track, rolling stock, water and wood stations, passenger and freight depots, offices, furniture and such other property, real and personal, as is owned by each of the railroads or railways of each company or corporation having existence under the laws of this State, or incorporated in whole or in part therein, and running through, or in this State in the manner as hereinafter prescribed.

MANNER OF LISTING AND VALUING PROPERTY OF RAILROADS.

SEC. 45. Every person, company or corporation owning or operating a railroad in this State shall return sworn lists or schedules of what of the taxable property of such railroads as hereinafter provided. Such property shall be listed and assessed with reference to its amount, kind and value, on the first Monday in March of the year in which it is listed.

SEC. 46. They shall in the month of March, in the year 1883, and at the same time every second year thereafter, when required, make out and file with the Secretary of State, a statement or schedule showing the length of the main and all side tracks, switches and turnouts in each county in which the railroad may be located, and in each city and town in said county through or into which the road may run. They shall also state the value of all improvements, stations and structures including the railroad track located on the right of way; but such schedule shall not include nor value embankments, tunnels, cuts, ties, trestles or bridges. New companies shall make and file such schedule in March next after the location of their road. When such schedule shall have been once made it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the Board of Railroad Commissioners. But such companies shall annually during the month of March report the value of such property by the description set forth in the following section of this Act, and note all additions and changes as shall have occurred in such right of way.

SEC. 47. Such railroad as described and scheduled in the last preceding section shall be held to be real estate for the purpose of taxation, and denominated "railroad track," and shall be so listed and valued, and shall be described in the assessment thereof as the railroad track of the —— —— railroad company in the county, city or town, and such description shall be considered as embracing all the property required to be assessed by section forty-six (46), and when advertised and sold for taxes no other description shall be necessary.

SEC. 48. The movable property belonging to a railroad company shall be held to be personal property and denominated for purposes of taxation, "rolling stock."

Every person, company or corporation owning, constructing or operating a railroad in this State shall, in the month of March annu-

ally, make and file with the Secretary of State, a list or schedule which shall contain a correct detailed inventory of all the rolling stock belonging to such company, together with the true valuation thereof, and which shall distinctly state and set forth the number of locomotives of all classes, passenger cars, dining cars, express cars, coal cars, pay cars, constructing and working cars, caboose cars, hand cars, cattle cars and all other kinds of cars belonging to such road and also all locomotives and cars not belonging to such company, but hired for its use for a term of not less than six months, it not being intended to tax locomotives or cars temporarily coming into or passing through this State, but only to tax such as are actually owned or leased by the companies in the State. Said schedule shall set forth the number of miles of track on which said rolling stock is used in this State, and the number of miles of track upon which said rolling stock is used in other States.

SEC. 49. The Board of Railroad Commissioners shall meet on the first (1st) Monday in April, in the year eighteen hundred and eighty-three (1883), and at the same time in each year thereafter, at the office of the Secretary of State for the State of Arkansas, and after being duly sworn to fearlessly, impartially and honestly discharge their duties shall proceed to examine the lists or schedules of the description and value of the railroad track of the railroad companies filed with the Secretary of State in accordance with the requirements of this Act, and if said schedules are made out in accordance with the provisions of this Act, and in the opinion of the board the valuation of said railroad track is fair and reasonable said board shall appraise the same, and it shall be the duty of the Secretary of State to certify to the assessor of each county in which such railroad is located, so much of said list as values such railroad track as is located in such county, and in any city or town of such county, and such assessor shall list and assess the same as real estate, by the description, as hereinbefore specified.

SEC. 50. Said board for the purpose of finding the value of the rolling stock of railroad companies in this State, shall take the total value as stated in the list and schedule of the rolling stock of each of the respective railroads of this State, filed in accordance with the requirements of this Act, and divide the same by the number of miles in the entire length of such railroad, and the result shall be the value per mile of such railroad for the purpose of taxation, and the value per mile of any such railroad so ascertained, shall be multiplied by the number of miles, or fraction of miles, thereof lying and being in any county, and the product thereof is the sum to be taxed in such county.

And it shall be the duty of the Secretary of State to certify to the assessor of the respective counties in which said sums are to be taxed, the amount to be taxed in their respective counties, and such assessors shall list and assess the same as personal property, designating the same as "rolling stock of . . . railroad company."

SEC. 51. All other personal property belonging to any railroad

company, except rolling stock, shall be listed and assessed in the county wherever the same may be, on the first day of March in each year; all other real estate, including the buildings and structures thereon, other than that denominated railroad track, belonging to any railroad company in this State, shall be listed and assessed by the assessor of the county in which they are situated at the same time, and in like manner as real estate belonging to individuals is by this Act required to be listed and assessed.

SEC. 52. If any person, corporation or company, owning, operating or constructing any railroad in this State shall neglect or refuse to make return to the Secretary of State, of the statements or schedules required by this Act to be returned to him by the first (1st) Monday in April, in the year eighteen hundred and eighty-three (1883), and at the same time and in each year thereafter, the Secretary of State shall notify the Governor of such default, and it shall be the duty of the Governor forthwith to convene said Board of Railroad Commissioners, and said board shall proceed at once, with the assistance of the county clerks and assessors of the counties in which such railroad is located, when they shall require such assistance, to ascertain the necessary facts in connection with the location and value of the railroad and rolling stock belonging to such defaulting railroad company, and in the discharge of their duty, said board shall have power to summon before them any person as a witness, and to have produced before them the books and papers of such defaulting railroad company, administer oaths and examine any persons summoned before them touching any matter necessary to enable said board to arrive at a just and correct value and description of the railroad track and rolling stock belonging to such railroad company, and shall have power to direct their writs of summons to the sheriff of any county of this State, and it shall be the duty of such sheriff to execute any and all process to him directed by said Board, and any person called before said board to testify, shall be guilty of perjury if he shall testify falsely, and said board having ascertained in the manner herein indicated, the description and value of the railroad track and rolling stock belonging thereto in each county, the Secretary of State shall certify the same to the respective county assessors, as provided in section 49 and 50 of this Act, and said assessors shall proceed at once to list and assess the same as hereinbefore prescribed.

SEC. 53. Any person, corporation, or company operating, owning or constructing a railroad in this State who shall fail to make return of the statement or schedule, by this Act required, to the Secretary of State, by the first (1st) Monday in April, eighteen hundred and eighty-three (1883), and at the same time each year thereafter, such person, company or corporation shall forfeit to the State, as a penalty, not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), for each offense, to be recovered in any proper form of action, in the name of the State of Arkansas, and paid into the State treasury. Upon failure of any

person, company or corporation to make such return at the time by this Act required, the Secretary of State shall at once notify the Attorney General of such default, and it is hereby made the duty of the Attorney General to institute the necessary legal proceedings to collect said penalty.

SEC. 54. The Secretary of State shall on or before the first (1st) Monday in March, in each year, notify each person, company or corporation, owning, operating or constructing a railroad in this State that such statement or schedule is required to be filed by the first (1st) Monday in April next ensuing.

Said notice to be printed or written and may be served by delivering the same to any agent of such railroad company, or by depositing the same in the post office addressed to such person, company or corporation, at a point where the general office of such railroad company is established, or to any city or town where such railroad company is transacting business and has an office or station.

SEC. 55. Each person, corporation or company, owning or operating a railroad or any part thereof in this State, shall file the list and schedule in this Act prescribed, nowithstanding it may be specified in the charter of any such railroad that such railroad shall be exempt from taxation, or exempt until the happening or accomplishment of any one or more facts.

SEC. 56. The Board of Railroad Commissioners shall hold their annual meetings herein provided for at the office of Secretary of State, on the first Monday in April in each year, and if they shall not complete their work on said day, shall meet from day to day until the same shall have been completed. The Governor shall have the right to convene said board in special meetings at any time.

## ASSESSOR.

SEC. 57. At the general election in the year 1884, and every second year thereafter, there shall be elected a person in each county in this State, as assessor, in the same manner as other county officers are now elected, whose term of office shall continue for two years, or until his successor is duly elected and qualified, who shall, within fifteen days after the receipt of his commission, enter into bond to the State of Arkansas, with good and sufficient security, in a sum of not less than one thousand dollars ($1,000), nor more than eight thousand dollars ($8,000), (the amount to be determined by the county court) conditioned for the faithful discharge of his official duties; which bond shall be approved by the County Judge; and said assessor shall be liable on his official bond to the State, county, and any school district, city or incorporated town, for all damages sustained by the State, county, school district, city, or incorporated town, by reason of any failure, neglect or refusal to discharge his duties according to law, which damages may be recovered in the same manner as other damages are recovered on other official bonds.

SEC. 58. Every assessor shall, on or before the first day of January succeeding his election, and before entering upon or discharging any of the duties of his office, take and subscribe to the oath prescribed in section 20, article 19, of the Constitution of Arkansas, and in addition thereto, the following oath or affirmation, which oath shall be endorsed upon the assessment books prior to their delivery to the assessor:

"I . . . , assessor for . . . county, do solemnly swear that the value of all real and personal property, moneys, credits, investments in bonds, stocks, joint stock companies, of which statements may be made to me by persons required by law, will be appraised at its actual cash value, that in no case will I, knowingly, omit to demand of any person, or corporation, of whom by law I may be required to make such demand, a statement of the description and value of personal property, or the amount of moneys and credits, investments in bonds, stocks, joint stock companies, or otherwise, which he may be required to list, or in any way connive at any violation or evasion of any of the requirements of the law or laws in relation to the listing or valuation of property, credits, investments in bonds, stocks, joint stock companies or otherwise, of any kind for taxation.

SEC. 59. If any person so elected fails or refuses to take the oath required in the preceding section, and file the same with the clerk of the County Court of his county, within the time prescribed, the office shall be declared vacant, and the clerk of the County Court shall immediately notify the Governor, and such vacancy shall be filled in accordance with the constitution and laws of the State.

SEC. 60. The assessor herein provided for shall appraise the real and personal property in his county in such manner and at such times as prescribed by this Act, and shall be allowed the following compensation for his services: For each name listed, twenty-five cents (25 cts.), and all the property belonging to one individual or corporation in the county, to be counted as one name; for each list of real property, the owner or owners of which are unknown or non-residents, one dollar ($1.00), and all such lands in one township and range to be embraced or counted as one list; but if any unknown person or non-resident owns lands in more than one township, he shall be allowed one dollar ($1.00) for each township: *Provided*, no fee shall be allowed any assessor for listing any name or personal property, unless said party or property, as the case may be, is in the county and subject to taxation.

SEC. 61. Any assessor who shall deem it necessary to enable him to complete within the time prescribed by this Act, the listing and valuation of the property, moneys and credits of his county, may, with the approval of the Judge of the County Court, appoint such number of assistants, having the legal qualifications, as he shall think necessary in order to enable him to comply with the requirements of this Act, and each assistant so appointed shall within the division assigned him, perform all the duties enjoined

upon assessors by law, and each assistant assessor shall swear to the correctness of the assessment and valuation of the property made by him, as the assessor is by this Act required to do, and the assessor and his assistants are hereby authorized to administer such oaths as are necessary to a proper discharge of their duties, as prescribed by law.

SEC. 62. The said assessor shall before the second Monday in January, annually, post up in three or more public places, in each township of his county, written or printed notices that the assessor at a day therein named will attend at the usual voting place in said township for the purpose of taking a list of the real and personal property of each resident of said township, and the *per capita* tax of such as are liable to pay the same, and said assessor shall remain at each voting place at least one day where the voting population is less than seventy-five, and two days where it is seventy-five and not more than one hundred and twenty-five, and three days where it is more than one hundred and twenty-five. And the assessor, upon application, shall furnish each tax payer an appropriate printed blank upon which to list his property subject to taxation.

SEC. 63. If any person shall refuse or neglect to attend at a time and place specified in said notices, or shall fail to make out and deliver to said assessor a statement or [of] personal property, moneys and credits, investments in bonds, stocks, joint stock companies or otherwise, or shall refuse and neglect to take and subscribe an oath or affirmation as to the truth of such statement which he is required to verify, and of the value of personal property subject to taxation, said assessor shall, from the best information he can procure, obtain the list of the property subject to taxation belonging to said delinquent in said county, and thereupon visit said delinquents at their places of residence, and require of them the list of real and personal property subject to taxation aforesaid, and if such delinquent resident cannot be found, or shall refuse to furnish the desired information, he shall proceed to examine, on oath or affirmation, all persons whom he may suppose to have a knowledge of said taxable property and shall list and value the same from the best information in his power to obtain.

Said assessor shall enter on the list of each delinquent recusant tax payer aforesaid, a charge of one dollar ($1.00), which shall be entered and run out on the tax books against said tax payer, and shall be collected by the tax collector, and one-half of which shall be paid to said assessor in addition to the other fees allowed said assessor, and the balance shall be paid into the school fund of the proper school district of said county.

*Provided*, that in case of sickness of said tax payer the same shall be a sufficient excuse for non-attendance at the time and place designated as aforesaid.

SEC. 64. In all cases in which the assessor is required in consequence of sickness, or absence of the person whose duty it is to make out a statement of personal property, moneys, credits, invest-

ments in bonds, stocks, joint stock companies or otherwise, or in consequence of his neglect or refusal to make, or to be sworn to such statements, the assessor, if he shall be unable to ascertain by positive evidence the several items and value thereof, shall return such articles and the value thereof, as from general reputation, and his own knowledge of the facts and circumstances, he believes to be a correct list of the articles and the value thereof, that such person would be by this Act required to list.

SEC. 65. Each assessor shall on or before the first (1st) Monday of June in each year, make out and deliver to the clerk of the County Court of his county, in tabular form, and alphabetical order, a list or lists of the names of the several persons, companies or corporations in whose name any personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, shall have been listed in his county, and he shall enter separately in appropriate columns, opposite each name, the aggregate value of the several species of personal property enumerated in section twenty (20), making separate lists of persons residing out of an incorporated city, town or village, and of persons who are residents of an incorporated city, town, or village, and shall state the number of the school district in which they reside when he assessed them.

The columns shall be accurately added up, and in every case, where any person whose duty it is to list any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, for taxation, shall have refused or neglected to list the same when called on for that purpose by the assessor, or to take and subscribe an oath or affirmation in regard to the truth of his statement of personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, when required by the assessor, he shall enter opposite the name of such person in an appropriate column "refused to list," or "refused to swear," as the case may be. In every case where any person required to list property for taxation, shall have been absent, or unable from sickness to list the same, the assessor shall enter opposite the name of such person, in an appropriate column, the word "absent," or "sick," as the case may be. To which return said assessor or assistant assessor, shall be required to make oath in the following words, viz.:

I, —— ——, assessor for the county of —— —— and State of Arkansas, do solemnly swear that I have made diligent efforts to ascertain all the taxable property being situate or subject to taxation, in said county of —— ——. That so far as I have been able to ascertain, the same is correctly set forth and described in the foregoing returns, and that the property therein mentioned is not appraised at less than its true value in money, so help me God.

. . . . . , Assessor.

Sworn to and subscribed before me, this . . . day of . . . . . , 18...

. . . . . Clerk . . . . . County.

SEC. 66. Each assessor shall at the time he is required to make his return of taxable property to the clerk of the County Court, also deliver to him the statements of property which he shall have received from persons required to list the same, arranged by school districts and in alphabetical order, and the clerk of the County Court shall carefully preserve the same in his office, for four years, and should the records of any county in the State be destroyed by fire or otherwise, after assessments have closed for any year, and before the collection of the taxes, the assessor is hereby authorized to make another assessment as heretofore provided.

SEC. 67. Each assessor shall at the time of taking the list of personal property also take a list of all real property situate in his county that shall have become subject to taxation since the last previous listing of property therein; with the value thereof estimated agreeably to the requirements of this act, and of all new buildings and structures of any kind over one hundred dollars ($100) in value, the value of which shall not have been previously added to or included in the value of the land on which structures have been erected, and shall make return thereof to the clerk of the county [court], at the same time he is required to make his return of personal property to such clerk. He shall describe the tract or lot of real property on which each of such structures have been erected; the kind of structures and the value thereof, and in the case of destruction by fire, flood, or otherwise of any building or structures over one hundred dollars ($100) in value, which shall have been erected previous to the last valuation of the land upon which the same shall have stood, or the value of which shall have been added to any former valuation of such land, the assessor shall determine as near as practicable the value of such structures, and make reduction thereof, and make return of the same to the clerk of the county court, as in this section provided, and the assessor shall value all such lots of any town or addition to any city or town, as may have been laid out in lots since the last appraisement and make return at the time and in the manner hereinbefore indicated.

SEC. 68. Each separate parcel of real property shall be valued at its true market value in money, excluding the value of crops growing thereon; but the price at which real estate would sell at auction or at a forced sale shall not be taken as the criterion of such true value. Each tract of land belonging to this State or to any county, city, town, or charitable institution, whether corporated or unincorporated, and saline, swamp, seminary, school or mineral lands held under a lease exceeding five years and not exceeding ten years, shall be valued at such price as the assessor believes could be obtained at a private sale for such leasehold estate. Personal property of any description shall be valued at the usual selling price of similar property at the time of listing. If any such property shall have no well fixed or determined value in that locality at the time, then the same shall be appraised at such price as in the opinion of the assessor could be obtained therefor at such time

and place. Investments in bonds, stocks, joint stock companies, or otherwise shall be valued at their value in money, and the quotations and selling price thereof may be considered in determining their values. Money, whether in possession or on deposit in this State, or out of it subject to the order or control of such person listing, shall be entered in the statement at the full amount thereof. Every credit for a sum certain, payable either in money, property of any kind, labor or service, shall be assessed according to its true value. If for a specified number or quantity of any article or articles of property, or for a certain amount of labor, or for services of any kind, it shall be assessed according to its true value. Annuities or moneys receivable at a stated period shall be rated at the price which the same may be worth in money. Where the fee of the soil in any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right to any mineral therein in another or others, the same shall be valued and listed agreeably to such ownership, in separate entries, and taxed to the parties owning the same respectively.

### When and How to Assess Real Estate.

Sec. 69. Each assessor, on or before the first (1st) Monday in June, in the year eighteen hundred and eighty-three (1883), and every second year thereafter shall make out and deliver to the clerk of the county court, a return in tabular form, contained in a book to be furnished him by such clerk of the county court, of the amount, description and value of the real property subject to be listed for taxation in his county and the amount and description of all lands belonging to the United States, and to the State of Arkansas; also of all other lots, parcels or tracts of land exempt from taxation, which returns shall contain:

*First.* The names of the several persons, companies or corporations in whose name the several tracts of real property, other than property situate in incorporated cities and towns in each congressional township within his county, shall have been listed, and in appropriate columns opposite each name, the description of each tract by section, or the largest subdivision of which the same is capable, designating the number of the section and the part thereof, and the congressional township or survey, and the value of each tract determined by the assessor — lands belonging to the United States or to this State not to be valued.

*Second.* The names of the several persons, companies or corporations in whose names the several lots of real property in each town or city in his county shall have been listed, and in appropriate columns opposite each name the description of each lot and value as determined by the assessor, and such description shall designate the town or city, the number of lots and parts thereof, and if part of a lot is listed it shall state the number of feet along the principal street on which it abuts. If the name of the owner of any tract of

land or lot shall be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot. In making such return each separate tract of land in each congressional township, shall be placed according to numerical order of the section, and each town or city lot according to the numerical order of lots and blocks; which returns shall be as near the following form as practicable:

| Names of Owners. | Part of Section. | Section. | Township. | Range. | No. of Acres. | Value. | No. of School District. | No. of Acres U. S. Land. | No. of Acres State Land. | No. of Acres otherwise exempt. | Value. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|

With the following affidavit:

I —— —— assessor, do solemnly swear that the foregoing is correct, and that I have appraised each tract or lot of land, except United States or State lands, at its true value in money, and not at what it would bring at auction or at a forced sale, so help me God.

. . . . . ., Assessor.

Sworn to, and subscribed before me, this . . . . day of . . . . ., 18. . .

. . . . . ., Clerk.

SEC. 70. It shall be the duty of each Assessor to make out, from such sources of information as shall be in his power, a correct and pertinent description of each tract or lot of real property in his county, so that the same can be identified and distinguished from any other tracts or parts of tracts, and he shall place a value on each subdivision of a block, and the improvements thereon, in cities and towns or additions thereto, notwithstanding the fact that one individual owns the whole block. And when he shall deem it necessary to obtain an accurate description of any separate tract or lot in his county, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession, and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property to such assessor, he may employ the county surveyor to make out a description of the boundaries, and location thereof, and a statement of the quantity of land therein, and the expense of such survey shall be returned by such assessor to the clerk of the County Court, who shall add the expense of such survey to the tax assessed upon such real property, and it shall be

collected by the collector of the county with such tax, and when collected shall be paid on demand to the person to whom the same is due; and the Assessor shall in all cases from actual view, or from the best sources of information within his reach, determine as near as practicable the true value of each separate tract and lot of real property in his county, according to the rules prescribed by this Act for valuing property, and he shall note in his plat-book separately, the value of all houses, mills and other buildings which shall be carried out as a part of the value of such tracts.

SEC. 71. For the purpose of enabling the assessor to determine the value of buildings and other improvements, he is hereby authorized to enter, with the consent of the owner or occupants thereof, and fully to examine all buildings and structures of whatsoever kind which are not by law expressly exempt from taxation, otherwise he shall determine the value by such information as he can obtain.

SEC. 72. The assessor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying grounds, public school houses, houses used exclusively for public worship, and institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which said house or institution or public building is situated, and which are by law exempt from taxation, and the value thereof. If such property is held and used for other public purposes, he shall state by whom or how it is held.

SEC. 73. If demanded the assessor shall deliver to the owner of any personal property assessed for taxation, a copy of such assessment, and any person listing real estate for assessment may present to the assessor a written description of the same, and the assessor, after having entered the same upon the assessment list, shall return the same to him, with a certificate verifying the same, as the assessment list furnished by such person for the assessment of that year.

SEC. 74. Whenever any person shall ascertain that an error has been made in the description of his lands, either by the assessor in listing the same, or by the clerk in making out the tax books he may present such certified description to the clerk of the County Court, who shall correct the error, in accordance therewith, on the margin of the assessment list in his office, and certify such amendment to the collector of his county, who shall make a like amendment on the tax book.

SEC. 75. For the purposes of this Act the terms town or city, and towns and cities, shall apply to all cities or towns incorporated or not incorporated, also to all blocks, or lots, or parts thereof, assessed for taxation as such, whether the same are situated in an incorporated city or town, or not.

[Secs. 76, 77, 78, and 79 were repealed by the next legislature in 1885. Sec. 76 required the assessor to gather certain statistics when

he took a list of the personal property in his county, and to forward one copy of such statement to the Secretary of State and to file another copy with the county clerk. Sec. 77 required the Secretary of State to print an abstract of such statement in pamphlet form. Sec. 78 imposed penalties upon assessors refusing to comply with these provisions, and also upon persons refusing to give information. Sec. 79 required the Secretary of State to cause to be printed a sufficient number of copies of the three preceding sections, also a sufficient number of suitable blanks, and to transmit the same to the county clerks to deliver to the assessors.]

### County Board of Equalization.

Sec. 80. The Board of Equalization of each county shall be composed as follows: Three intelligent citizens, real estate owners, and qualified electors of such county, to be appointed by the Governor on or before the first (1st) day of April, eighteen hundred and eighty-three (1883), and every two years thereafter; the said three citizens shall be selected from different portions of the county, and shall hold their office for two years. Said board shall meet in each county on the first (1st) Monday in June of each year, and organize by electing one of their number president. The clerk of the County Court shall be clerk of said board. Each member of said board shall, before entering upon the discharge of his duties, take the oath of office prescribed in section twenty (20), article nineteen (19), of the Constitution of Arkansas: *Provided*, that any party aggrieved by any action of the Board of Equalization, may appeal therefrom to the County Court.

Sec. 81. Members of such Boards of Equalization shall receive the sum of three dollars ($3.00) per day for each day engaged in the discharge of their duties, as prescribed in this Act: *Provided*, said board shall not be in session longer than two weeks in any one year.

### Equalization of Personal Property.

Sec. 82. There shall be in the year eighteen hundred and eighty-three (1883), and annually thereafter, a session of the County Board of Equalization for the purpose of equalizing the assessment of personal property, moneys and credits in each county. Said session shall be held at the clerk's office in each county on the first (1st) Monday in June, each year. Said board when in session shall have power to hear complaint, and to equalize by adding to or taking from the valuation of all personal property, moneys and credits within the county; and if during the time of collecting taxes upon the property so equalized any obvious errors be discovered in the assessment of any personal property, or if the Board of Equalization shall have valued any property excessively, the owner of such

property so assessed or equalized may, by application to the County Court, by proper showing, at any time before the collector closes his books, have the same adjusted. It shall be the duty of the assessor to attend on the meetings of said board, and explain his assessment to said board, when requested.

SEC. 83. In the equalization of personal property the county board may add to or take from the valuation of the personal property, moneys or credits of any person returned by the assessor or which may have been omitted by him, or add other items to it upon such evidence, as is satisfactory, whether such return is made upon oath of such person or upon the valuation of the assessor. In the equalization of real property, not previously entered for taxation on the tax books as then listed, it shall raise the valuation of such tracts and lots of real property as in the opinion of the county board has been returned below their true value in money, to such price or sum as it may find to be the true value thereof, agreeably to the rules prescribed by this Act for the valuation of real property or may reduce the valuation of such tracts or lots as in the opinion of the board have been returned above their true value, as compared with the average valuation of the real property of such county, having due regard to their relative situation, quality of soil, improvement, and natural and artificial advantages possessed by each tract or lot.

That for the purpose of this equalization said board, or any member thereof, shall have free access to the county records of the county, and it is made their duty to carefully examine said records in making their investigations for the purpose of equalizing the said assessment.

The clerk of the county court shall keep an accurate journal or record of the proceedings of said board. In case a vacancy should occur in said board the Governor shall fill the same by appointment.

## REAL ESTATE.

SEC. 84. The county board of equalization shall meet on the first (1st) Monday in June in the year eighteen hundred and eighty-three (1883), and every second year thereafter at the office of the clerk of the county court, and each member of said board shall take an oath to fearlessly, impartially and faithfully equalize the value of the property assessed.

When the clerk shall lay before said board the returns of the real property, made by the assessor, and said board shall immediately proceed to equalize the valuation of such real property, so that each tract or lot shall be entered upon the tax books at its true value in money, and for this purpose shall observe the following rules:

*First:* It shall raise the valuation of such tracts and lots of real property as in the opinion of the board have been returned below their true value, to such price or sum as may be deemed to be the

true value thereof, agreeably to the requirements of this Act, in regard to the valuation of real property. Said board may actually enter upon and view property when they are not fully satisfied of its true value.

*Second:* It may reduce the valuation of such tracts or lots as in the opinion of the board have been returned above their true value, as compared with the average valuation of the real property of such county, having due regard to the relative situation, quality of soil, improvements, and natural and artificial advantages.

*Third:* The clerk of the county court shall receive the sum of three ($3.00) dollars per day, for each day said board remains in session.

### Duties of Clerks of County Courts.

Sec. 85. The clerk of the county court of each county shall, on or before the first (1st) Monday in February, eighteen hundred and eighty-three (1883), and at the same time every second year thereafter, make out and deliver to the assessor of each county an abstract containing a description of each tract of land situate in his county, with the name of the owner, if known, and the number of acres or quantity of land contained therein, as the same shall appear from the books of his office, and he shall commence the same in the lowest number of township and range in his county and in northeast corner of each township, and shall proceed numerically with all the sections, townships and ranges in his county; first setting down all the sub divisions of each section, as they belong to different individuals, or the whole section together if owned by one person, and not divided on account of parcels being of different value.

Lands of the United States or of the State, or lands otherwise exempt from taxation, shall be entered upon such abstract in the name of the owner. In case of real estate situate in any city or town, such clerk of the county shall proceed according to the plan or plat thereof commencing with the lowest number of the block and lot or other sub-division, and proceed numerically with all the lots in a block, and all the blocks in a city or town, until completed, but no failure to observe any of these requirements shall be held to vitiate any assessment, if the land be so described as to be identified.

To facilitate the assessment and collection of taxes the county court of each county shall (if not already done) procure and keep a land book, or books of maps of all the townships or fractional townships in the county, which book shall be well bound and shall be deposited in the office of the clerk of the county court, and shall also procure a list of the lands owned by the United States and by this State in their respective counties.

And no allowance shall be made to the clerk of the county courts for making such abstract unless such abstract embraces every acre of land situate in his county as shown by the maps of the townships in his county, if there be such.

WHEN TO ABSTRACT REAL PROPERTY TO THE AUDITOR.

SEC. 86. The clerks of the county courts shall, on or before the second (2d) Monday in August, eighteen hundred and eighty-three (1883), and every second year thereafter, make out and transmit to the Auditor of State an abstract of the real property in each township in his county in which he shall set forth

*First:* The number of acres exclusive of town or city lots, returned by the assesssor of his county, with such addition as may have been made thereto.

*Second:* The aggregate value of such real property, other than town or city lots, as returned by the assessor of his county, inclusive of such additions as shall have been made thereto.

*Third:* The number and value of all city and town lots.

It is further provided that the clerks of county courts of the several counties of this State, shall within thirty days after each annual settlement (with the county collector) make out a full and complete financial report of the condition of the affairs of the county, giving its indebtedness, its source of revenue, the amount expended during the fiscal year for all purposes; the amount from all sources for all purposes collected, the financial condition of each school district in the county, and forthwith publish the same in some newspaper published in such county; if no newspaper be published in such county, then the same to be published in a newspaper having the largest circulation in the county.

The county court shall make an order for the payment of the fee for printing the same, in accordance with the law in force at the time such publication is made regulating fees for printing.

TAX BOOKS AND EXTENSION OF TAXES.

SEC. 87. The clerk of the county court shall make out in books, prepared for that purpose, in such manner as the Auditor of State shall prescribe, a complete list or schedule of all the taxable property in his county, and the value thereof as equalized and arranged in the following form:

Each separate tract of real property in each congressional township in his county other than town or city property, shall be contained in a line or lines opposite the names of owner or owners, arranged in numerical order.

Each separate lot or tract of real property in each city or town, shall be set down in a line or lines opposite the names of the owner, or owners arranged in numerical order.

The aggregate value of personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of each person, company or corporation, within each congressional township, shall be placed in a column opposite the name of the owner, person, company or corporation in whose name the same is listed; the names of the persons in each school district, who are not residents of any incorporated town, city or village, shall be placed

in alphabetical order in one list, and the names of the persons who are resident of any incorporated town, village or city, shall be entered in another list in alphabetical order.

SEC. 88. The clerk of the County Court shall, after receiving statements of the rates and sums of money to be levied for the current year, from the Auditor of State, and from such other officers and authorities as shall be legally empowered to determine the rates or amount of taxes to be levied for the various purposes authorized by law, forthwith determine the sums to be levied upon each tract or lot of real property in his county, adding the taxes of any previous year or years, that may have been omitted, and upon the amount of personal property, moneys and credits listed in his county in the name of each person, company or corporation, which shall be assessed equally on all real and personal property subject to such taxes.

SEC. 89. It shall be the duty of the county clerk to add each tax book delivered to the collector, making the separate columns of values when added together amount to the sum of the column of total values when added up; and at the end of the tax book to recapitulate the additions of each page, so as to make the same prove itself to be correct, according to the form to be furnished by the auditor.

SEC. 90. In all cases where any clerk of the County Court by inadvertence or mistake, shall have in any year omitted or shall hereafter omit to enter on the books of his county any lands or lots or parts of lots situate in his county subject to taxation, it shall be his duty to enter the same on the tax books of the next succeeding year, and to add to the taxes of the current year the simple taxes of each and every preceding year in which such lands or lots shall have so escaped taxation.

SEC. 91. When for any cause the taxes in any county, for any year, shall not be collected, the same shall be charged on the tax books for the next year, and collected by the same officers and in the same manner as the taxes of that year.

SEC. 92. In all cases where practicable, and the land is owned by one person, or one or more persons jointly, description of lands, both on the tax books and delinquent lists, shall be in tracts not less than one hundred and sixty acres.

SEC. 93. The clerk of the County Court shall mark opposite every tract, town or city lot that may have been heretofore forfeited to the State for the non-payment of taxes, the word "forfeited," and on such tract, town or city lot, there shall not be charged any taxes unless the Commissioner of State Lands shall officially advise such clerk of the County Court that the same is or has become subject to taxation, and in that event the same taxes shall be charged and collected thereon as are or may be allowed by law. The several assessors in the several counties shall assess all the lands or lots or parts thereof that may appear on the plats or lists furnished them, and if any clerk of the County Court shall have lost, or if the

records of his office shall not contain a list of the lands forfeited to the State within his county, he shall certify that fact to the Comsioner of State Lands, and said Commissioner of State Lands shall forthwith furnish said clerk with such list.

SEC. 94. The clerk of the County Court of each county shall on or before the first (1st) Monday in November in each year, make out and deliver the tax books of his county to the collector, with his warrant thereunto attached, under his hand and the seal of his office, authorizing said collector to collect such taxes. The collector shall give duplicate receipts for the tax books, in which the amount of the different taxes shall be separately stated, and the county clerk shall forward one of said receipts to the Auditor of State.

SEC. 95. The tax books delivered to the collector shall be a public record, and at the expiration of his term of office, they shall be delivered to and deposited in the office of the county clerk, there to be preserved as other records of the county.

SEC. 96. The clerk of the County Court shall make out and transmit to the Auditor of State on or before the first (1st) Monday in September, annually, a statement of the aggregate value of the taxable property in his county, and of the total amount of taxes for all purposes assessed thereon for that year, and at the same time he shall make out and transmit to the Auditor of State an abstract of the number and value of each of the enumerated articles, the value of merchandise, and of manufacturing stock, and the value of other personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and the value of all other personal property, as returned by the assessor, or as fixed by the County Board of Equalization.

Such abstract shall be made out in such form as the auditor shall prescribe.

SEC. 97. If any person, required to list property for taxation, shall have been prevented by sickness, or absence, from giving to the assessor the list of such property, as by this Act prescribed, such person, or his agent having charge of such property, may at any time before the making out of the tax books by the clerk of the county court, make out and deliver to the assessor of the county a statement of the same as required by this Act, and the assesssor shall in such case make an entry thereof in the returns of the proper city, town, ward, or school district, and correct the item or items in said return made by him, as the case may require, but no such statement shall be received by the assessor from any person who shall have refused or neglected to make oath to his statement when required by the assessor under the provisions of this Act, nor from any person unless he shall have first made and filed with the clerk of the county court an affidavit that the person required to list the same, was absent from his county without design to avoid listing his property, or was prevented by sickness from giving to the assessor the required statement when called upon for that purpose.

SEC. 98. The clerk of the County Court shall from time to

time correct any errors which he may discover in the names of the owner, in the description or quantity of any tract or lot contained in the list of real property in his county, but in no case shall he make any reduction in the valuation of any tract or lot of real property, except such as shall have been ordered by the county board of equalization in conformity with the provisions of this Act.

### Auditor's Duty.

Sec. 99. The Auditor of State shall from time to time prepare and transmit to the several clerks of the county courts, such assessor's blanks, blank books and instructions as shall by law be necessary to carry into effect the provisions of this Act. The expense of procuring such assessor's blanks and blank books as are required by the provisions of this Act shall be paid out of the State treasury upon the warrant of the Auditor.

Sec. 100. The Auditor shall, on or before the first (1st) Monday in July, annually, give notice to such clerks of the county courts of the rates per centum required by the General Assembly to be levied for the payment of principal and interest of the public debt, for the support of common schools, for defraying the expenses of the State [government] and for such other purposes as shall be prescribed by law, which rates or per centum shall be by the county clerks levied upon the taxable property contained in the tax books of their respective counties.

Sec. 101. Taxes assessed upon real or personal property shall bind the same, and be entitled to preferences over all judgments, executions, encumbrances, or liens whensoever created, and all taxes assessed shall be a lien upon, and bind the property assessed from the first (1st) Monday in February of the year in which the assessment shall be made, and shall continue until such taxes, with any penalty that may accrue thereon, shall be paid; *Provided*, That as between grantor and grantee said lien shall not attach until the first (1st) Monday in July in each year.

No property shall be exempt from sale or distress for taxes due thereon. It shall not be necessary to the validity of an assessment or of a sale of land for taxes, that it be assessed to its true owner, but the taxes shall be a charge upon the real and personal property taxed, and when sold, shall vest the title in the purchaser without regard to who owned the land or other property when assessed or when sold, and the personal property of any deceased person shall be liable in the hands of any executor or administrator for any tax due on the same by any testator or intestate.

### Collector.

Sec. 102. The Sheriff of each county shall be ex-officio collector of all taxes of his county until otherwise provided, and after giving bond as hereinafter prescribed in this Act, and upon receiving the

tax books of his county, he shall proceed to collect the same according to law.

Each collector may appoint one or more deputies to assist him in the collection of taxes, and shall take such bond and security from the person appointed as he deems necessary for his indemnity, and shall in all cases be liable for the proceedings and misconduct of his deputies.

SEC. 103. Each Sheriff before entering upon his duties as collector of taxes, shall give bond and security to the State, which bond shall be in duplicate and approved by the county court, but any person may, when he deems the security on said bond insufficient, appeal to the circuit court of the proper county, if in session, if not, to the circuit judge in vacation, from the order of the county court, approving such bond, and if upon such appeal the court or judge finds the bond to be sufficient, such court or judge shall approve it; but if upon said appeal it is found to be insufficient the court or judge shall order a new bond, or additional security to be given as may be deemed proper and right, and the same shall be subject to approval of said circuit judge or court.

Said collector's bond shall be conditioned for the faithful performance of the duties of his office, and for well and truly accounting for and paying over all moneys collected by him, by virtue of his office; and his term of office as collector shall not expire until his successor is qualified.

SEC. 104. The bond of collector shall be approved as prescribed in this Act, and shall be in double the amount of the aggregate taxes to be collected by such collector, one copy of which shall be forwarded by the clerk of the County Court to the Auditor of State, the other filed with the recorder of the county to be by him recorded.

SEC. 105. If the sheriff of any county should fail to give the collector's bond as herein provided before the first (1st) Monday in November of each year, the clerk of the County Court shall immediately notify the Governor, and some competent person, having the requisite qualifications, shall be appointed by the Governor to perform the duties of collector, and the person so appointed shall in all things comply with the provisions of the laws regulating and governing collectors, and when so appointed, full faith and credit shall be given to all his acts as such.

SEC. 106. In the event of the death, removal or disability of the person appointed under the preceding section to perform the duties of collector, the clerk of the County Court should immediately inform the Governor, who shall appoint some competent person, having the requisite qualifications under the constitution and laws of this State, who shall in all things comply with the provisions of the laws regulating and governing collectors, and when so appointed full faith and credit shall be given to his acts as such.

SEC. 107. Whenever any collector dies after he has received the tax books for any year, and before he has collected the taxes charged therein, his legal representative shall hand over at once to

his successor, as soon as he is appointed and qualified, the tax books, and pay over at once all moneys, less his commission, which have been collected by the deceased collector, from all sources and then in his hands.

SEC. 108. The new collector shall execute receipts in triplicate, to be attested by the clerk of the County Court, for the tax books so delivered and showing the amount already collected upon the same, and the amount uncollected; also receipts in triplicate for the amount of taxes collected by the deceased collector from all sources and paid over to him by the executor or administrator, one of each of which receipts shall be certified by the clerk to the Auditor of State, who shall thereupon charge the new collector with the balances of the State taxes due on the tax book and the amount paid over to him by the executor or administrator of the deceased collector, and another shall be filed with the county clerk, who shall thereupon charge the new collector with the balance of taxes due on the tax books and with the amount paid over by such executor or administrator, and the third shall be given to the executor or administrator of the deceased collector.

SEC. 109. Any collector who shall resign, or be removed or disqualified, shall pay over all moneys which may be in his hands, due the State, county, city or town, or school district, to his successor in office, and take duplicate receipts therefor, one of which receipts shall be filed with the clerk of the County Court, and the other retained by the collector, and the county clerk shall certify to the Auditor of State the amount of such receipt, and it shall be the duty of the collector charged therewith to pay the same into the treasury in the same manner and at the same time as regular revenues are to be paid.

SEC. 110. In the receipts mentioned in section one hundred and nine (109), it shall be specified particularly on what account the moneys mentioned were received, whether from taxes or from other sources.

### NOTICE OF COLLECTION OF TAXES.

SEC. 111. The collector shall cause printed notices to be posted in three public places in each township, town or city throughout the county, one of which shall be at the place of holding elections in such township, town or city, and published in some newspaper published in the county, if any there be, stating on what day the collector or his deputy will attend at the place of holding elections, in each township, town or city,—which day shall not be prior to the first (1st) Monday in November of each year, but as soon thereafter as practicable, for the purpose of receiving taxes. The collector or his deputy shall attend, for the purposes aforesaid, on the day and at the place named in such notice, and thereafter shall attend at his office at the county seat until the tenth (10th) day of February of each year, to receive taxes from persons wishing to pay the same.

## Funds Receivable for Taxes.

Sec. 112. The tax levied to pay the interest on the public debt, shall be collected in United States currency and paid into the State treasury in the currency collected.

The collector shall receive county warrants in payment of county taxes; the orders or warrants that may be payable on presentation of any town, city or school district for their respective taxes, and the State Treasurer's certificate of indebtedness, of date not prior to July 23, 1868, for State taxes, levied to defray the general expenses of the State: *Provided*, this section shall not be so construed as to compel the acceptance of any order or warrant that by the laws of this State was required to be funded.

Sec. 113. The collector of revenue shall pay into the State and county treasury, in kind, all money collected by him, whether specie, United States paper currency, national bank notes, silver or gold certificates, warrants or scrip, as authorized by law to be received, and every collector or other officer who shall fail to comply with the provisions of this section shall be fined one hundred dollars ($100) for each violation, and be held liable on his official bond for the difference in value between the funds received and those paid, and shall not be eligible to hold any office of trust in this State.

Sec. 114. Any collector of any county, city or town, in this State who shall return any person, personal property, or real estate delinquent, by whom or upon which taxes have been paid, or shall advertise for sale, offer to sell, or sell any property, real or personal, upon which the taxes have been paid for the year for which the same shall be returned delinquent, advertised, offered for sale or sold, shall forfeit and pay to the owner of such property, or any other person interested therein, or who may be injured thereby, a sum equal to double the taxes, penalty and costs charged on said personal property or land, together with such actual damages as may have been sustained, and for any sum so recovered such officer and his sureties shall be liable on his official bond.

## Tax Receipts.

Sec. 115. The collector, whenever any taxes are paid, shall give the person paying the same a receipt therefor, dated, numbered and filled up, so as to show by whom, on what, and amount of taxes paid, amount of land and personalty, rate per centum, at the foot of the receipts, which receipt shall be prepared for the purpose, and in case of land, distinctly specifying it as it is described on the tax books, and such receipt may be in the following form, viz.:

## TAX RECEIPT FOR 188...

| PARTS OF SECTION. | Section. | Township. | Range. | Acres. | 100ths | Valuation. | No. | School Dist. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

Total valuation of real property as valued on tax books.....

Value of personal property as per tax books .....

Total valuation of real and personal property taxed ..... $

| | DOLLARS. | CTS. | |
|---|---|---|---|
| State Tax, ½ mill, S. S..... | | | |
| Sinking Fund Tax, 4 mills, cur..... | | | |
| General School Tax, 2 mills, S. S..... | | | |
| Asylum, ½ mill, S. S..... | | | |
| County General Tax, .. mills, C .S..... | | | |
| Co. Debt Tax, .. mills, O. C. S. or cur .... | | | |
| District School Tax, S. S..... | | | |
| Corporation Tax, cur..... | | | |
| Assessors' penalty, S. S..... | | | |
| Poll Tax, S. S..... | | | |
| Total Tax ..... | | | |

REMARKS.—The holder of this receipt is requested to examine it thoroughly, and should there be a mistake in it return it immediately for correction.

$.....

COLLECTOR'S OFFICE,

..... County, Arkansas, ..... 188....

Received of .....

..... Dollars,
100

Taxes for the year 188...., upon the property herein described, as charged upon the Tax Books.

..... .....

Sheriff and Ex-Officio Collector of Taxes for ... ..... County, Arkansas.

SEC. 116. The Auditor of State shall prepare, and by the first (1st) Monday in November in each year, furnish to the collectors of the respective counties, a sufficient number of blank forms, contained in a well bound book, for the record of tax receipts, to be issued by such collectors, and said blanks may be in the following form:

RECORD OF TAX RECEIPTS.

Issued by ..... Collector of Taxes for ..... County, Arkansas, for the year 188....

| To Whom Issued. | Parts of Section. | Section. | Township. | Range. | Valuation of Real Estate. | Valuation of Personal Property. | Total Valuation. | Total Taxes. | State Scrip. | County Scrip. | Currency. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Am'ts bro't forward. | | | | | | | | | | | |

Each collector shall enter in said book the date of each tax receipt by him issued, the name of the person paying the taxes, distinctly specifying each tract of land, town or city lot, as it is described in the tax receipt, as taken from the tax book, the valuation of such real estate, the valuation of such personal property, and name of the township in which such personal property is situated, total valuation of real and personal property, the amount of taxes paid on account of State, county, school and city or town, respectively, and total amount of taxes paid by such person.

Said entry shall be made at the time of issuing the receipt, and the aggregate of such receipt shall be added up on each page, and carried forward to the next page, and so on, so that the amount collected can be seen at any time by an inspection of such book.

The collector shall, at the time such entry is made, enter upon the margin of the tax book, opposite the property paid on, the page of the record book of tax receipts and where such entry is made therein.

Each collector shall also enter in said book, in immediate connection with said other entries, the amount of his payment of taxes to the State and county treasurers, respectively, with the date of such payments, so that it can be seen by reference to said book, whether the payments made to the State and county treasurers embraced all he had collected, less his commissions. Said books shall at all times be subject to the inspection of any State or county officer, or of any citizen of the State.

If any collector shall fail to keep such book, or to make the

entries at the time and in the manner as in this Act prescribed, or shall make any false entry therein, or shall refuse to permit any person entitled thereto to examine said book or shall fail to preserve such book and deliver the same to the county clerk at the time herein prescribed, shall be guilty of a misdemeanor, and upon conviction fined in any sum not more than five hundred dollars ($500), and be removed from office.

The expense of printing and binding said book shall be paid for out of the State treasury.

SEC. 117. The book of record of tax receipts by the preceding section required to be kept by the collectors of the respective counties of this State, whether filled [up] or not, shall at the time of making his final settlement with the county clerk, as in this Act prescribed, be delivered by the collector to the clerk of the County Court, which shall be received and receipted for by such clerk, and by him preserved as a public record of his office, and said book shall become a public record of such county, and shall be evidence that the taxes have been paid by the respective persons, upon the property and at the times as therein specified and entered.

## COLLECTION BY DISTRAINT.

SEC. 118. At any time after the tenth (10th) day of February in each year, after such tax may be due, the collector shall distrain sufficient goods and chattels belonging to the person charged with taxes levied upon personal property to pay the taxes due upon the personal property of said person, and a penalty of twenty-five (25) per centum thereon, (which penalty shall be collected by the collector and paid into the county school fund), and the cost that may accrue, and shall immediately proceed to advertise the same in three public places in the county, stating the time when, and the place where, such property will be sold. If the taxes for which such property is distrained, and costs which shall accrue thereon, are not paid before the day appointed for sale, which shall be not less than ten (10) days after taking such property, the collector shall proceed to sell the same at public vendue, or so much thereof as will be sufficient to pay said taxes and the cost of such distress and sale: *Provided*, that he shall not distrain any goods and chattels for taxes levied on real property, except as provided in section three (3) of this Act.

SEC. 119. If the tax upon personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of any person, association or corporation, shall remain unpaid after the tenth (10th) day of February in any year, and the collector shall be unable to find any personal property of such person, association or corporation whereon to levy, to make the taxes then due, he shall present such account for taxes to any person or persons who may be indebted to such person, association or corporation, and demand the payment thereof, and the person to whom the same shall be pre-

sented shall pay over to the collector the amount of such taxes, if so much he owe, and take the collector's receipt therefor, which shall be deemed and taken in all courts of this State a payment on his indebtedness to the full amount expressed on the collector's receipt.

If such person or persons should fail or refuse on demand to pay over the amount of such tax, if so much he owe, to the collector, said collector shall file a statement of the amount of such tax with the person so refusing, which shall operate as a garnishment upon the person so served, and the collector shall thereupon proceed to collect such taxes in the manner fixed by law in cases of garnishment.

*Provided*, that no person shall be compelled to pay any debt before the same may be due, nor a greater amount than he may be owing such person, corporation or association.

The cost of garnishment shall be paid by the party refusing to pay such taxes when so requested.

SEC. 120. The collector shall be allowed the same fees for making distress and sale of goods and chattels for the payment of taxes, which are now or may hereafter be allowed by law to sheriffs for making levy and sale of property on execution, travelling fees to be computed upon the actual distance necessarily travelled in each instance from point to point, without regard to the distance from the county seat, and the collector is hereby authorized and empowered to levy on and sell the goods and chattels of the person liable for taxes herein provided, in the same manner and under the same restrictions as goods and chattels are required to be levied and sold under execution on judgment at law, when not inconsistent with the provisions of this Act: *Provided*, that no goods and chattels of any person shall be exempt from such levy and sale. Said collector shall be allowed commission for collecting the revenue as follows:

For the first ten thousand dollars ($10,000) collected, five (5) per cent. in kind, for all sums over ten thousand dollars ($10,000) and under twenty thousand dollars ($20,000) collected, three (3) per cent. in kind, for all sums over twenty thousand dollars ($20,000) collected, two (2) per cent. in kind.

SEC. 121. Whenever any collector shall have reason to believe that any person, charged with taxes, (other than those upon real estate) is about to remove from the county without paying his taxes, he may at any time levy and collect such taxes with costs by distress and sale.

## DELINQUENT LIST OF PERSONAL PROPERTY, &C.

SEC. 122. The collector shall, within seventy (70) days after the tenth (10th) day of February, in each year, make out and furnish to the county clerk a report of all delinquent and insolvent tax payers in his county, with the amount due from each, which report shall be verified by the written affidavits of the collector, to the effect that he has in person, or by his deputy, made a legal demand

for taxes of all delinquent tax payers found in his county, by going to their places of abode or business, and searching for something to seize and sell for taxes, that the tax payers mentioned in said report have failed to pay their taxes and have no effects known to him which can be made to pay the same, and that he has made diligent inquiry after such of said delinquents as have not been found, and that he has been unable to find them in his county, and that they have no effects known to him which can be made to pay their taxes. Separate lists of such delinquents shall be made for each school district, and for each city or town.

The County Court shall proceed to examine such report so made as aforesaid, and shall allow to the collector a credit for such of the taxes so reported insolvent or delinquent, as satisfactorily appears to said court to remain uncollected without default of the collector, and no more, and a list of such allowance shall be made out by the county clerk and certified and transmitted to the Auditor of State within ten days after the same is approved by the County Court, or County Judge, and the same shall be credited to the collector in his settlement with the Auditor of State and with the county clerk.

In the event the County Court shall not meet at the time of the filing of such report, or within ten days thereafter, the collector may present said report to the County Judge, who shall proceed to examine the same and make such allowance as to him satisfactorily appears to remain uncollected without any default of the collector, and shall certify the same under his hand and seal, and such allowance shall be entered of record by the clerk, and the same proceedings shall be had thereon as if the same had been done by the County Court.

SEC. 123. Notwithstanding such allowance the tax collector, if possible, shall collect the taxes of such insolvent and delinquent tax payers; he shall retain a copy of the list reported by him for six months, and which shall be charged to him by the county clerk, and whenever he can find any personal property belonging to such person he shall distrain and sell the same, on ten (10) days' notice, to the highest bidder for cash, and shall pay over the same as other taxes collected, and the Auditor of State upon every settlement with the collector, shall require of him a report under oath, whether he has collected taxes from any and of which of said delinquent tax payers.

SEC. 124 The County Court, or County Judge, shall not allow to the collector a credit for the insolvent and delinquent list he reports, unless the same is verified by the oath of the collector, as prescribed in section one hundred and twenty-two (122), of this Act, nor shall the same be allowed to the collector merely because he presents it duly sworn to.

But the County Court, or County Judge shall carefully examine each school district and incorporated city or town list, as reported, and shall scrutinize each name and amount reported insolvent, and avail himself of any information by witnesses to test the accuracy

of said list, and shall not allow to the collector credit for the taxes of any delinquent who may be ascertained to have any personal property by a sale of which to make such taxes, and all of said lists for, which the collector shall not be allowed as a credit, shall stand as a charge against such collector.

SEC. 125. Each collector in making returns of the delinquent lists of personal property to the Clerk of the County Court, shall note on the margin of said returns the county in this State to which any delinquent tax payer may have removed or resides in, with the date of his removal, if he is able to ascertain such fact. The Clerk of the County Court shall immediately forward to the clerk of any county of this State, to which any delinquent tax payer has removed or resides in, a certified statement or account of the taxes so assessed and not paid, which statement or account shall specify the value of the property on which such taxes were levied, and amount of the taxes levied thereon, with the penalty and cost, and such collector shall proceed to collect the same, in the same manner, and with like authority, as herein prescribed for collecting delinquent taxes upon personal property, and shall make return thereof to the collector of the proper county.

The collector may collect at any time all delinquent personal property tax in his county, or that may be sent from another county, by the sale of property or otherwise, and shall make returns of the amount so collected to the proper counties and officers.

SEC. 126. The delinquent list together with the fees allowed thereon to any collector, shall be delivered to his successor, and the same shall be returned to the Clerk of the County Court by the outgoing collector for that purpose, and so on until the whole shall be collected; *Provided*, That after said list has been returned two (2) years, the County Court shall have power to strike off all names of persons who in the opinion of such court own no property out of which the taxes due on said list, can be made by sale or otherwise.

## DELINQUENT LIST OF REAL ESTATE.

SEC. 127. The collector shall by the first (1st) Monday in March in each year file with the Clerk of the County Court a list or lists of all such taxes levied on real estate, as such collector has been unable to collect therein describing the land or town or city lots, on which said delinquent taxes are charged as the same are described on the tax book, and the collector shall attach thereto his affidavit to the correctness of such list. The Clerk of the County Court shall carefully scrutinize said list and compare the same with the tax book and record of tax receipts hereinbefore provided for, and shall strike from said list any tract of land, town or city lot upon which the taxes shall have been paid or which does not appear to have been entered upon the tax book, or that shall appear from the tax book to be exempt from taxation.

No taxes returned delinquent as aforesaid shall be paid into the

State treasury, except by the collector. It shall be the duty of the Clerk of the County Court to add a penalty of twenty-five (25) per centum upon all taxes so returned delinquent, which penalty shall be collected in the manner provided for the collection of delinquent taxes.

SEC. 128. The clerks of the several counties of this State shall cause the list of the delinquent lands in their respective counties, as corrected by the clerks, to be published weekly for two weeks between the first (1st) Monday in March and the second (2d) Monday in April in each year. Such list of delinquent lands shall be published in some newspaper of the county, if any be published therein, if not in some newspaper published nearest to said county, having a circulation in such county.

There shall be attached to said list a notice that said delinquent lands will be sold by him; said notice shall be in substance as follows:

DELINQUENT TAX SALES.

The lands and lots and parts of lots returned delinquent in ——county for the year 18— together with the taxes and penalty charged thereon, agreeably to law, are contained and described in the following list, viz.: (Here insert the list with the names of the owners, as the same are described on said list as taken from the tax book) and notice is hereby given that said several tracts, lots or parts of lots, or so much thereof as may be necessary to pay the taxes, penalty and cost due thereon will be sold at the court house in said county on the second (2d) Monday in April next, unless the said taxes, penalty and costs be paid before that time; and that the sale will be continued from day to day until the said tracts, lots and parts of lots be sold.

—— ——

Clerk of —— —— County.

(Date of notice.)

The Clerk of the County Court shall record said list and notice in a book to be by him kept for the purpose, and shall certify at the foot of said record, stating in what newspaper said list was published, and the date of publication, and for what length of time the same was published before the second (2d) Monday in April then next ensuing, and such record so certified, shall be evidence of the facts in said list and certificate contained.

SALE OF DELINQUENT LANDS.

SEC. 129. The collector shall attend at the court house in his county on the second (2d) Monday in April next after the publication of the list as hereinbefore prescribed, and shall then and there, between the hours of ten (10) o'clock in the forenoon and five (5) o'clock in the afternoon, proceed to offer for sale each tract of land, city or town lot, for the taxes, penalty and costs thereon, and

the person offering at such sale the amount of taxes, penalty and costs due on the whole tract or lot for the smallest sub-division thereof shall be the purchaser thereof; and if no person shall offer or bid the amount of taxes, penalty and costs due on said tract, lot or part thereof, then the collector shall bid the same off in the name of the State of Arkansas, bidding therefor the amount of taxes, penalty and costs due thereon; and where less than the whole of a tract of land or lot is sold the part sold shall be laid off in a square in the northeast corner. The collector shall continue said sale from day to day until each tract of land, city or town lot, or part thereof, shall be sold.

The collector shall be allowed ten cents for each tract of land sold.

SEC. 130. The person purchasing such tract, lot or part thereof, shall forthwith pay the collector the amount of taxes, penalty and costs charged thereon, and on failure so to do, the collector shall immediately offer said tract of land, town or city lot or part thereof again for sale, in the same manner as if no such sale had been made, and in case there should be no bid when again offered the collector shall bid the same off to the State, as prescribed in this Act; upon such tract of land, town or city lot or part thereof the collector shall not consider the bid of the person who bid the same off in the first instance and failed to pay therefor.

SEC. 131. When the collector shall bid the amount of taxes, penalty and costs for the State as hereinbefore provided, the State shall not be required to pay the same to the collector.

SEC. 132. The collector or his deputy, or the Clerk of the County Court or his deputy, shall neither directly or indirectly be concerned in the purchase of any tract of land, town or city lot sold for the payment of taxes.

SEC. 133. The Clerk of the County Court shall attend all such sales of delinquent lands and lots, town or city lots or parts thereof made by the collector of the county and shall make a record thereof in a substantial book, therein describing the several tracts of land, town or city lots, or parts thereof, as the same shall be described in the advertisement aforesaid, stating what part of each tract of land, town or city lot sold, and the amount of taxes, penalty and costs due thereon, and to whom sold; and he shall record in a separate book to be kept for that purpose, each tract of land, town or city lot sold to the State, together with the taxes, penalty and cost due thereon. Immediately after such sale the Clerk of the County Court shall make out and certify to the Auditor of State a copy of each of said sale lists as recorded in said book, together with an abstract thereof showing the total valuation of the property contained in each, and the total amount of the taxes, penalty and costs thereon, in each.

SEC. 134. The collector shall make out and deliver to the purchaser of any land or town or city lots, or parts thereof, sold for delinquent taxes as aforesaid, a certificate of purchase, for which the

purchaser shall pay the collector twenty-five (25) cents, therein describing the lands or lots, as the same were described in the notice of sale, stating therein what part of such tract of land, town or city lot was sold, and the amount of taxes, penalty and cost paid therefor. Such certificate shall be assignable in law, and an assignment thereof shall vest in the assignee or his legal representative all the right, title and estate of the original purchaser.

SEC. 135. The Clerk of the County Court shall immediately after the sale, transfer upon the tax books, all lands sold for taxes, to the name of the purchaser, charging him therefor the sum of ten (10) cents for each tract, which shall be charged and paid as part of the cost of the sale.

SEC. 136. All lands, town or city lots, or parts thereof, which may hereafter be sold for taxes, at delinquent sale, under the laws of this State, may be redeemed at any time, within two years from, and after the sale thereof; and all lands, city or town lots, belonging to insane persons, minors, or persons in confinement, and which have [been] or may hereafter be sold for taxes, may be redeemed within two (2) years, from, and after the expiration of such disability.

SEC. 137. Where any tract or portion of land, town or city lot or any part thereof shall be sold for taxes, and afterwards redeemed, it shall be the duty of the Clerk of the County Court to insert a minute of such redemption on the record of lands sold for taxes, the date thereof, and by whom made, and sign the same officially.

SEC. 138. All applications for the redemption of lands or town or city lots sold to the State or to individuals for taxes, shall be made to the Clerk of the County Court of the county in which the land or town or city lot was sold.

SEC. 139. Any owner or his agent, or any other person for the owner, desiring to redeem any land, town or city lot, or part thereof, sold for taxes under or by virtue of any law of this State, may within the time limited by law for such redemption, deposit with the County Treasurer upon the certificate of the Clerk of the County Court, particularly describing such land or town lot, or city lot, an amount of money equal to the taxes for which said land or town or city lot was sold, together with penalty, cost and the taxes subsequently paid thereon by such purchaser, or those claiming under him, with interest at the rate of ten (10) per cent. per annum on the whole amount so paid.

SEC. 140. Upon the presentation of such certificate of the clerk of the County Court to the county treasurer, and upon the payment of the money to the treasurer as aforesaid, he shall give the person making such payment duplicate receipts therefor, describing the land, town or city lot, or part thereof, as the same is described in or upon the certificate of the clerk of the County Court aforesaid, one of which receipts shall be registered by the treasurer and immediately filed with the clerk of the County Court by the person receiv-

ing the same, and thereupon the clerk of the County Court shall forthwith cancel the sale and transfer of such land, city or town lot, and such receipt when so filed shall operate as an extinguishment of all rights, either in law or equity, conferred in any way or manner by such sale.

SEC. 141. In all cases where such deposit shall be made within two (2) years from the time of the sale of such lands, town or city lots or any part thereof for delinquent taxes, the clerk of the County Court shall at the request of the person present the receipt of the county treasurer for such deposit, note such fact on the back of said certificate, and sign his name thereto. When any tract, town or city lot, or any portion thereof, is thus redeemed, or any deposit with the county treasurer is thus made, it shall be the duty of the clerk of the County Court to note such redemption or deposit, the date thereof, and by whom made, on his record of tax sales, and sign his name officially thereto.

SEC. 142. When any joint tenants, tenants in common, or coparceners, shall be entitled to redeem any land or lot, or part thereof, sold for taxes, and any person so entitled shall refuse or neglect to join in the application for the certificate of redemption, or from any cause cannot be joined in such application, the clerk of the County Court may entertain the application of any one of such persons, or as many as shall join therein, and may make a certificate for the redemption of such portion of said land or lot, or part thereof, as the person making such application shall be entitled to redeem.

SEC. 143. Lands sold to the State may be redeemed within two (2) years after sale, subject to the same restrictions, conditions and regulations as hereinbefore described in relation to the redemption of lands sold for taxes, by the application to the clerk of the County Court, and payment of the same amount and penalty hereinbefore mentioned, and the taxes which would have accrued thereon if such land or lot had been continued on the tax books, and the taxes extended to the county treasurer, and the amount due the State shall be paid by the county treasurer to the county collector, who shall give duplicate receipts therefor, stating in said receipts the amount belonging in each fund separately, one of which shall be immediately forwarded by the treasurer to the auditor, and the other to the clerk of the County Court, who shall make quarterly reports to the auditor of the amounts due the State on account of such redemption of any land sold to the State as herein provided. It shall be the duty of the clerk of the County Court to make a note thereof on the record book of such sale provided for in this Act.

## TAX DEEDS.

SEC. 144. At any time after the lapse of two years from the time of sale of any tract or lot of land for taxes, if the same shall remain unredeemed, the Clerk of the County Court on production

of the certificate of purchase shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the tract or lot described in such certificate. In case the certificate of purchase has been assigned the Clerk of the County Court shall briefly recite the fact in the deed. The deed so made by the Clerk of the County Court shall be acknowleged and recorded in the same manner that other deeds and conveyances of real estate are required to be acknowledged by the laws of this State; such deed to be made by the Clerk of the County Court shall be substantially in the following form, viz.:

Know all men by these presents that whereas the following described property (here describe the land sold) situate in the county of ———— and State of Arkansas, was subject to taxation for the year (or years) A. D. 18—, and, *Whereas*, The taxes assessed upon said real property, for the year (or years) aforesaid, remain due and unpaid at the date of the sale hereinafter named; and, *Whereas*, The collector of the revenue of said county did on the —— day of —— A. D. 18—, by virtue of the authority in him vested, by law, at the sale begun and publicly held on the second (2d) Monday in April A. D. 18— expose to public sale at the court house in the county aforesaid, in substantial conformity with all the requirements of the statutes in such cases made and provided, the real property above described, for the payment of the taxes, penalty and cost then due, and remaining unpaid on said property; and, *Whereas*, At the time and place aforesaid,—— —— of the county of —— and the State of ——— having offered to pay the sum of —— dollars and —— cents, being the whole amount of the taxes, penalty and costs then remaining due and unpaid on said property, for (describe) which was the least quantity bid for, and payment having been by him made to said collector, said property was stricken off to him at that price; and, *Whereas*, the said ——— did on the —— day of ——— A. D. 18— duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest therein, to ——— of the county of ——— and State of ———, and, *Whereas*, Two (2) years have elapsed since the date of said sale, and said property has not been redeemed as provided for by law:

Now therefore, I —— ——, Clerk of the County Court of the county aforesaid, in consideration of the said sum of money to the collector paid as aforesaid, and by virtue of the statutes in such cases made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said —— ———, his heirs and assigns, the real property aforesaid, and more particularly described as follows: (Here describe as sold). To have and to hold unto him, the said —— ——— his heirs and assigns forever; subject, however, to all the rights of redemptions provided by law.

In witness whereof I, —— ——, Clerk of the County Court as

aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, on this —— day of —— A. D. 18—

—— —— ——

Clerk of the County Court of
—— county, Arkansas.

State of Arkansas }
County of —— }

I hereby certify that before me —— ——, in and for said county, personally appeared the above named —— ——, Clerk of the County Court of said county, personally known to me, to be the Clerk of the County Court of said county, at the date of the execution of the above and foregoing conveyance, and to be the identical person, whose name is affixed to, and who executed the above conveyance, as Clerk of the County Court of said county, and acknowledged that he, as Clerk of the County Court of said county, had executed the same for the considerations, uses and purposes, therein contained, and set forth, and desired the same certified, which is done.

Given under my hand and seal, on this —— day of —— 18—

—— —— ——

EFFECT OF DEED.

SEC. 145. The deed shall be signed by the Clerk of the County Court, in his official capacity, and acknowledged by him before some officer authorized by law to take acknowledgments of deeds, and when substantially thus executed, shall vest in the purchaser all the right, title, interest and estate of the former owner in and to the lands conveyed, and also all the right, title, and claim of the State and county thereto; and shall be *prima facie* evidence that all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law, to make a good and valid sale, and to vest the title in the purchaser were done.

SEC. 146. And in all controversies and suits involving title to real property, claimed and held under and by virtue of a deed executed substantially as aforesaid by the Clerk of the County Court, the party claiming title adverse to that conveyed by such deed, shall be required to prove in order to defeat the said title, either that the said real property was not subject to taxation for the year (or years) named in the deed, or that the taxes had been paid before the sale, that the property had been redeemed, from the sale, according to the provisions of this Act, and that such redemption was had or made for the use and benefit of persons having the right of redemption, under the laws of this State; or that there had been an entire omission to list or assess the property, or to levy the taxes, or to

give notice of the sale, or to sell the property. But no person shall be permitted to question the title acquired by a deed of the Clerk of the County Court, without first showing that he, or the person under whom he claims title to the property, had title thereto, at the time of the sale, or that title was obtained from the United States, or this State, after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title as aforesaid; *Provided*, That in any case, where a person had paid his taxes, and through mistake (or otherwise) by the collector, the land upon which the taxes were paid was afterward sold, the deed of the Clerk of the County Court shall not convey the title. *Provided further*, That in all cases, where the owner of lands sold for taxes, shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same, or in the purchaser to defeat the same, and if fraud is so established, such sale and title shall be void.

SEC. 147. The purchaser at the sale of lands or lots, or parts thereof, for the taxes of the interest of any joint tenant, tenants in common or coparcener, or any portion of such interest, shall, on obtaining the deeds from the clerk of the county, hold the same as tenant in common with the other proprietors (or proprietor) of such land, or lot, and be entitled to all the privileges of a tenant in common, until a legal partition of such land, or lot, or part thereof, shall be made.

SEC. 148. Immediately after the expiration of the two years allowed by law, for the redemption of land, sold for taxes, the clerk shall make out a certificate of sale to the State for all lands purchased by the State, as shown by the records of such tax sale in his office, which have not been redeemed, and state therein the amount of the taxes, penalty and cost thereon, and cause the same to be recorded in the Recorder's office of the county, and thereupon the title to all lands embraced in such certificate, shall vest in the State, and the clerk shall immediately transmit such certificate to the Commissioner of State Lands and thereupon the said lands shall be subject to disposal, as other forfeited lands shall be.

SEC. 149. When, by the provisions of any former law of this State, any officer or person, was by law authorized to make deeds for lands or lots sold for taxes, and the same has not been done, the clerk of the County Court of the proper county shall be and is hereby authorized to make such deeds to all persons entitled thereto; and the deeds which shall be made by the clerk of the County Court shall be good, and valid in law, as if made by the person authorized under such former law to make such deeds, and in case of a certificate of purchase of lands sold for delinquent taxes issued to any purchaser, under any of the Acts heretofore passed, having been lost, mislaid or destroyed, and the fact being shown to the county clerk, and no deed having been executed therefor, said county clerk being fully satisfied from the evidence of the existence and loss of any such certificate, shall, on written application for that

purpose, proceed to make and execute to such purchaser a good and sufficient deed of conveyance for any such tract of land or lot, which deed shall be good and valid in law to all intents and purposes, as if such certificate had not been mislaid, lost or destroyed.

SEC. 150. The clerk of the County Court shall enter in a book to be kept in his office, a minute of all deeds by him made for lands and lots, and parts thereof, sold for taxes, therein naming the person who stood charged with the taxes at the time of such sale, the name of the purchaser, a brief description of the land or lot, or part thereof, sold, the quantity sold, the name of the grantee in the deed and the date of the execution.

SEC. 151. The clerk of the County Court of any county in which any lands or lots situate, shall have been or may hereafter be sold for taxes, under the provisions of any law of this State, is hereby authorized and required to execute the proper deed therefor to the person entitled to receive the same, whether said land or lot shall at the time of the execution of said deed continue to be within said county or not, in the same manner as though the said land or lot still remained within the limits thereof, any law to the contrary notwithstanding, for which he shall be entitled to charge and receive a fee of one dollar ($1.00).

SEC. 152. Upon the sale of any land, town or city lot, or part thereof for taxes then due, if such sale should prove invalid, on account of any informality in the proceedings of any officer having any duty to perform, in relation thereto, the purchaser at such sale shall be entitled to receive from the proprietor of such land or lot, the amount of taxes for which such land was sold, and the amount of taxes paid thereon by the purchaser, subsequent to such sale, and such land or lot shall be bound for the payment thereof, and to recover from the officer failing to perform his duty as aforesaid (for which such officer shall be liable on his official bond), the penalty and cost of advertising, with interest thereon, from the payment thereof, and in the event of the purchaser having heretofore bid and paid a greater amount than the taxes, penalty and cost of advertising, the Clerk of the County Court shall draw a warrant on the County Treasury for the amount of such excess, as may have been paid thereon, in favor of the purchaser or his assignee.

SEC. 153. No sale of any land or lot, for delinquent taxes, shall be considered invalid, on account of its having been charged on the tax book to any other name than that of the rightful owner; *Provided*, That such land or lot, be in other respects sufficiently described on the tax book, and the taxes for which the same is sold, be due and unpaid, at the time of such sale.

SEC. 154. All actions to test the validity of any proceeding in the appraisement, assessment, or levying of taxes upon any land or lot, or part thereof, and all proceedings, whereby is sought to be shown any irregularity of any officer, or defect or neglect thereof, having any duty to perform, under the provisions of this Act, in the assessment, appraisement, levying of taxes, or in the sale of lands or

lots delinquent for taxes, or proceedings whereby it is sought to avoid any sale under the provisions of this Act, or irregularity or neglect of any kind by any officer having any duty or thing to perform under the provisions of this Act, shall be commenced within two (2) years from the date of sale, and not afterwards.

SEC. 155. No purchaser of any land, town or city lot, nor any person claiming under him, shall be entitled to any compensation for any improvements which he shall make on such land, town or city lot within two (2) years from and after the sale thereof; for improvements made after two (2) years from the date of sale, the purchaser shall be allowed the full cash value of such improvements, and the same shall be a charge upon said land.

## COLLECTION OF LICENSE TAX.

SEC. 156. It shall be the duty of the Clerk of the County Court to issue blank licenses for the privileges and purposes mentioned in this Act and deliver them to the collector and charge him with the amount thereof specifying in each case the number and amount of each kind of license.

In case where by the provisions of this Act the privilege is to be for twelve (12) months or less, the license shall expire on the thirtieth (30th) day of April next after the date of the delivery thereof by the collector to the party applying for the same, and in case where the privilege is to be for six (6) months or less, such license shall expire on the thirtieth (30th) day of June and thirty-first (31st) day of December, respectively, next after the date thereof.

Each blank license shall be signed by the clerk and authenticated by the seal of the County Court, and the collector in granting every license shall fill up and countersign one of the blank licenses delivered to him by the clerk of the County Court, and no license unless thus signed, authenticated and countersigned, shall authorize or avail any person to act under the same. The collector shall be entitled to five (5) per cent. commissions on each license for amount collected, to be paid by the person receiving the license.

SEC. 157. The privilege taxes paid as herein provided, to the collector, shall be reported by him quarterly, and paid into the State and county treasuries, as other taxes, and each collector shall, at the end of each quarter, make to the clerk of the county a detailed report of licenses issued by him during the quarter aforesaid, showing the number and date of the license, the name of the license, the privilege for which it was issued and the amount collected for it, and if any collector shall fail to make such report he shall be notified by the clerk of the County Court and required to make such report, and for failure, shall be guilty of a misdemeanor. Immediately upon the collector making such quarterly report the clerk of the County Court shall certify to the auditor the amount of taxes due the State, collected, and the auditor shall charge the same to the collector.

SEC. 158. It shall be the duty of the sheriff, or any constable of the county, to ask, demand and receive from the person or persons who may attempt in any county to make and exhibit any of the objects or performances, upon which a specified tax is levied, the tax for such exhibition, and upon demand, if such person or persons shall neglect or refuse to pay the tax, he, or they, shall be deemed disturbers of the public peace, and it shall be the duty of the officers making such demand to command him or them to forthwith desist, and to compel obedience to such command such officer may call to his aid any number of citizens.

It shall be the duty of the collector to call upon any person he may know, or have reason to believe, to be pursuing within his county any business upon which, by the provisions of this Act, a specific tax is levied, without having a license therefor, as required by law, to produce such license, and if such person fail or refuse to produce to such collector such license, then it shall be the duty of said collector to immediately give information against such person to some Justice of the Peace of said county, but if the Circuit Court be in session then it shall be the duty of the collector to give the information to the grand jury of said county.

SEC. 159. The license herein provided for shall be a personal privilege, enjoyable only by the person to whom it is issued, and shall not be transferable.

SEC. 160. The account of the clerk of the County Court against the collector for the license herein provided for, shall be so kept as to show by denominations and numbers exactly what licenses issued to him by said clerk are in his hands at any time, and upon the final settlement of each collector the clerk of the County Court shall require the return by such collector of all of such licenses issued to such collector and not issued by him, and such collector shall receive credit for all of such licenses as he shall return to such clerk without having issued them, and for all of such licenses as such collector shall not thus account for, he shall be held liable upon his official bond as collector for so much money as the amount of such license, and such clerk shall certify such settlement to the auditor.

SEC. 161. Every person shall be liable to pay tax for the lands, town or city lots of which he may stand seized for life, by the courtesy, in dower, or by husband in right of his wife, or may have the care of as guardian, executor or administrator, or as agent or attorney, having the funds of the principal in his hands.

SEC. 162. It shall be the duty of each person holding lands as aforesaid, to pay the taxes which may be assessed thereon each year.

SEC. 163. Every person holding lands as guardian, executor or administrator, and neglecting or refusing to list or pay the taxes upon the same, in the manner aforesaid, shall be liable to an action by his ward or devisee by any damage sustained by such neglect. Every person having the care of lands as agent or attorney as aforesaid, and having funds of the principal in his hands, for such purpose, neglecting or refusing to list or pay the taxes on such lands,

shall be liable in an action to his principal for any damage such principal may have sustained by such neglect or refusal.

SEC. 164. Every attorney, agent, guardian, executor, or administrator, seized, or having the care of lands, as aforesaid, who shall be put to any trouble or expense in listing or paying the taxes on such lands, shall be allowed a reasonable compensation for the time spent, the expenses incurred, and money advanced as aforesaid, which shall be deemed in all courts a just charge against the person for whose benefit the same shall have been advanced, and the same shall be preferred to all other debts or claims, and be a lien on the real estate, as well as the personal estate, of the person for whose benefit the same shall have been advanced.

SEC. 165. If any person who shall be seized of lands for life or in right of his wife, shall neglect to pay the taxes thereon so long that such lands shall be sold for the payment of the taxes, and shall not within one year after such sale redeem the same according to law, such person shall forfeit to the person or persons next entitled to such land in remainder or reversion, all the estate which he or she, so neglecting as aforesaid, may have in said lands, and the remainder-man, or reversioner, may redeem the lands in the same manner that other lands may be redeemed after being sold for taxes; and moreover, the person so neglecting as aforesaid, shall be liable in an action to the next entitled to the estate for all damages such person may have sustained by such neglect.

SEC. 166. In all cases where any tract of land may be owned by two or more persons as joint tenants, coparceners, tenants in common, and one or more of the proprietors shall have paid or may hereafter pay the tax, or tax and penalty charged on his proportion of such tract, or one or more of the remaining proprietors shall have failed or may hereafter fail to pay his proportion of his tax, or tax and penalty charged on said land, and partition of said land has or shall be made between them, the tax, or tax and penalty, paid as aforesaid, shall be deemed to have been paid on the proportion of said tract set off to the proprietor who paid his proportion of said tax, or tax and penalty, and the proprietor so paying the tax, or tax and penalty, as aforesaid, shall hold the proportion of such tract, set off to him, as aforesaid, free from the residue of the tax, or tax and penalty, charged on said tract, before partition, and the proportion of said tract set off to him, as aforesaid, free from the residue of the tax, or tax and penalty, charged on said tract, before partition of said tract, set off to the proprietor, who shall not have paid his proportion of said tax, or tax and penalty, remaining unpaid, shall be charged with said tax, or tax and penalty, in the same manner as if said partition had been made before said tax, or tax and penalty, had been assessed. Whenever any land so held by tenants in common shall be sold upon proceedings in partition, or shall be taken by the election of any of the parties to such proceedings, or when any real estate shall be sold at judicial sale, or any administration, executors, guardians or trustees [sale], the court shall order the taxes and pen-

alties, and the interest thereon against such lands to be discharged out of the proceeds of such sale or election.

SEC. 167. The clerk of the County Court shall, within ten (10) days after the close of the sale of lands for delinquent taxes, make settlement with the collector of his county, and ascertain the amount of taxes with which said collector is to stand charged, and after deducting the amount of taxes still remaining delinquent, and on all errors, and the collection fees allowed the collector from the several taxes charged on the tax books, in a just and ratable proportion, the collector shall be held liable for the balance of such taxes, and the clerk of the County Court shall certify the balance due the county, and the balance due for every other purpose, to the proper persons who by law are entitled to the custody of said balances.

The settlement so made with the collector shall be presented to the County Court by the clerk at the first term thereof, after said settlement is made, and if the same shall be found to be correct the County Court shall order the settlement spread in full upon the records of said County Court.

SEC. 168. The County Courts of the several counties in this State shall at the April term thereof examine the settlements of the collectors of the several counties with the clerks of said counties, and approve or reject the same.

### WITH THE AUDITOR.

SEC. 169. The collector shall, within fifteen (15) days after his settlement with the clerk of the County Court, proceed to the seat of government and there make settlement with the Auditor for all the State taxes collected by him. The auditor shall deduct the amount shown to be delinquent, and by error, shown by the list furnished him by the clerk, and the collection fees allowed the collector from the several taxes charged on the tax books, in a just and ratable proportion, and such fees as he may be entitled by law to receive. The collector shall be held liable for the balance of such taxes.

### TO PAY OVER MONEY AFTER SETTLEMENT.

SEC. 170. The collector shall immediately after such settlement, and before the fifteenth (15th) day of May, of each year, pay over the moneys thus found due, at such settlements, to the person or officer entitled to receive them, taking therefor duplicate receipts, one of which, in each instance, shall be filed with the clerk of the County Court, for money so paid.

### FAILING TO PAY MONEY INTO THE STATE TREASURY — PENALTY AND PROCEEDINGS TO COLLECT.

SEC. 171. If any collector of revenue and others bound by law to pay money directly into the State treasury, shall fail to pay the

amount so found due into the treasury and produce the Treasurer's receipt to the auditor therefor, within fifteen (15) days after the settlement required in section one hundred and sixty-nine (169), of this Act, the delinquent shall forfeit the commissions allowed him by law, and the sum of twenty-five (25) per centum on the amount, and also a penalty of five (5) per centum per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid, until actual payment, and the auditor shall charge such delinquent accordingly, and the amount of principal and forfeitures may be recovered as hereinafter provided for.

SEC. 172. It shall be the duty of the auditor immediately after the time specified in section one hundred and sixty-nine (169) of this Act, in each year, to issue a warrant of distress against such delinquent and his securities, directed to the coroner, or any constable in the county in which such delinquent and securities reside, commanding him to distrain, levy, and sell the goods and chattels, lands and tenements of such delinquent collector and his securities, in the same manner as such property is required to be sold by virtue of an execution issued out of the Circuit Court.

SEC. 173. When any lands and tenements shall be sold by any officer, under the authority of any such warrant, he shall make, execute, acknowledge and deliver to the purchaser, at the expense of said purchases, a deed for such lands and tenements, in the same manner as sheriffs are required to make and acknowledge deeds for lands sold under execution, and such deeds when recorded shall have the same force and effect as a deed made by a sheriff.

SEC. 174. The amount due by such collector shall be a lien on the goods and chattels, lands and tenements, of such delinquent collector and his securities from the time such warrant shall come to the hands of such officer until the same shall be discharged according to law.

SEC. 175. It shall be the duty of every such officer, immediately after the receipt of any such warrant, to endorse thereon the time when it came to his hands, and to cause a record thereof to be made in the office of the clerk of the Circuit Court of his county.

SEC. 176. All moneys which may remain in the hands of such officer of the proceeds of any sale of goods and chattels, lands or tenements, after paying the amount of such warrant, and the cost and expense of such sale, shall be returned to such delinquent collector, or his securities, as the case may be.

SEC. 177. Every officer collecting money by virtue of any warrant, issued by the auditor, as aforesaid, shall be entitled to receive the same fees as are allowed by law to sheriffs for collecting and paying over moneys under executions.

SEC. 178. It shall be the duty of every officer, collecting money by virtue of any warrant issued as aforesaid, to pay the same into the State Treasury within thirty (30) days after the receipt thereof. He shall, with his securities, be liable on his official bond for the amount so collected, with the sum of twenty-five (25) per centum

added thereto, in case of his failure to pay the same into the State treasury as herein provided.

### Settlement of Clerks and Sheriffs With Courts of Record.

Sec. 179. The clerks of the several courts of record of this State shall collect and pay over to the treasurer of their respective counties all taxes due on writs, executions, official seals and other sums of money, by whatever name designated, coming to their hands and belonging to the State or county, and shall render account at each term of their respective courts, verified by oath, of all moneys which have been received to the use of the State or county not before accounted for.

Sec. 180. Such clerks shall keep a true account of all fines, penalties, forfeitures and judgments imposed, adjudged or rendered in favor of the State, or any county, by their respective courts, distinguishing those payable to the State, from those payable to the county, and shall keep the same open to the inspection of the judges of the respective courts, and the members of the grand jury.

Sec. 181. It shall be the duty of the judges of such courts, to audit and adjust the accounts of their respective clerks, according to the records, dockets, and papers of their respective courts, and to make two separate bills of the several sums, wherewith their clerks shall be chargeable, specifying on what account the same is payable, and certify a copy thereof, to the clerk of the County Court, who shall file and charge the same accordingly; and the other shall be certified and delivered to the county treasurer.

Sec. 182. It shall be the duty of the clerks of all courts of record, at each term thereof, to settle with the sheriff of each county, for all moneys by him received, or which he ought to have collected for the use of the county, and which have not been accounted for, and they shall make out two separate lists, of all sums chargeable to any sheriff, and payable to any county, specifying on what account, and certify the same under the seal of the court.

Sec. 183. One of the lists so certified shall be immediately transmitted to the clerk of the County Court to which such sums are payable, who shall immediately charge the same, accordingly; and the other shall be transmitted to the treasurer of the said county.

### Settlement of the Collectors, and Other Officers With the County Court.

Sec. 184. The County Court shall, at each regular term, cause the collector to settle his accounts of all blank licenses, with which he shall stand charged; and after giving him credit for all licenses returned, shall ascertain the amount due from him on that account, and shall cause the same to be entered of record, so as to show the amount due the county.

SEC. 185. In like manner and time, the sheriff or collector shall be required to settle his accounts of all moneys received by him, on account of taxes, fines, penalties, and judgments, and the same shall be entered of record, so as to show what is due the State and county, respectively; from what officer received; from what branch of revenue; and the particular fund if any to which the same belongs. If any collector shall fail to make settlement with the County Court at the time aforesaid, he shall be attached until he makes such settlement. Immediately after such settlement with the County Court, the clerk of the County Court shall certify to the Auditor of State, the amount due the State, and the collector shall within fifteen (15) days thereafter, pay the same into the State treasury, and in ten (10) days thereafter, pay over to the county treasurer, all sums due the county.

SEC. 186. The sheriff shall collect and account for all taxes due upon convictions, and all fines, forfeitures, and other sums of money, by whatever name designated, owing to the State or any county, by virtue of any order, judgment or decree of a court of record.

SEC. 187. Whenever the sheriff or collector, shall receive the amount due from any officer by voluntary payment, or by the sale of goods and chattels, he shall give the officer duplicate receipts for the same, stating therein the whole amount received, how much for the State, and how much for the county, and the particular fund to which it belongs, and the officers taking such receipts, shall, without delay, deposit one of them with the clerk of the County Court.

SEC. 188. The clerk of the County Court shall charge the sheriff or collector, and county treasurer, with all moneys that may come into their hands, by virtue of any of the provisions of this Act; and the money received for penalty and costs of advertising, shall be first applied by the sheriff or collector to the cost of advertising the delinquent lands, and the surplus if any paid into the county treasury, at the time of his annual settlement; should there not be sufficient of penalty, and cost of advertising to pay the cost of advertising the delinquent lands, the balance shall be paid out of the county treasury.

SEC. 189. Every collector of the county revenue, having made settlement according to law, of the county revenue received and collected by him, shall pay the amount found due from him, into the county treasury, and the treasurer shall give duplicate receipts therefor; one of which shall be filed by the collector in the office of the clerk of the County Court.

SEC. 190. Every collector or sheriff, who shall fail to make payment of the amount due from him on settlement, in the time and manner prescribed in the preceding section, shall forfeit and pay to the county, the sum of five (5) per centum per month on the sum wrongfully withheld, to be computed from the time the payment ought to have been made, until actual payment, which may be recovered, by suit, on his official bond.

SEC. 191. All collectors, sheriffs, clerks, constables, and other

persons, chargeable with moneys belonging to any county shall render their accounts to, and settle with the County Court, at each regular session thereof, and pay into the county treasury any balance which may be due the county, and take duplicate receipts therefor, and deposit one of them in the office of the clerk of the County Court, within five (5) days thereafter.

SEC. 192. Whenever the court shall make such settlement with any officer, the substance thereof shall be entered of record, so as to show separately the whole amount received by such officer; the amount of commission allowed him; how much remains due to the State, and how much to the county; and on what account each sum of money was received, and to what particular fund, if any, it belongs.

SEC. 193. All officers, who shall have made settlements with the courts as aforesaid, shall forthwith pay to the treasurer, the full amount with which they shall stand charged on such settlement, and in default thereof, the sheriff or collector shall enforce the payment in the manner, and by the means prescribed in this Act, for enforcing the collection of taxes.

SEC. 194. Every officer required to make settlement, who shall fail to settle his accounts in the time and manner prescribed by law, may be attached and imprisoned until such settlement shall be made to the satisfaction of the court to which he is accountable.

SEC. 195. Every such officer who shall fail to pay the amount due from him on such settlement, and who shall be returned by the collector or treasurer to the County Court, as a delinquent, so that the collector or treasurer shall be credited in their accounts with the amount of such delinquency, shall forfeit five (5) per cent. per month on the amount due from the time it ought to have been paid, until collected, which may be collected by suit on his official bond.

SEC. 196. If any person thus chargeable shall neglect to render true accounts, or settle as aforesaid, the County Court shall adjust the accounts of such delinquents according to the best information that can be obtained, and ascertain the balance due the county.

SEC. 197. In such cases the court may refuse to allow any commission to such delinquent, and he shall moreover without delay pay into the county treasury, the balance found due aforesaid.

SEC. 198. If such delinquent shall not pay the amount thus found due the county, and produce the treasurer's receipt therefor, within ten (10) days after the balance is ascertained, the clerk shall charge such delinquent as a penalty for such failure, twenty-five (25) per centum on the amount then due.

SEC. 199. Unless such delinquent shall appear upon the first day of the next succeeding session of the court, and show good cause for setting aside such settlement, the court shall enter judgment for the amount due with the penalty added thereon, and fifty per centum per annum, until the same shall be paid, and may issue execution thereon.

SEC. 200. If good cause be shown for setting aside such settle-

ment, the court may re-examine, settle and adjust the same according to law, and may remit any penalty that may have been imposed.

SEC. 201. The amount or balance of every account so settled and due to the county shall be a lien from the date of the settlement of such account on the real estate and personal property of the delinquent, situated in the county wherein each delinquent lives.

SEC. 202. When any balance shall be found against any clerk, sheriff, collector, coroner, constable, or other officer, for moneys accruing to the county treasury, and the same shall not be paid within the time prescribed by law, it shall be lawful for the County Court, fifteen (15) days' notice being given to such delinquent and their securities, to render judgment against delinquents and their securities for the amount of all moneys ascertained to be due to the county, and issue execution therefor.

SEC 203. Whenever any error shall be discovered in the settlement of any county officer made with the County Court, it shall be the duty of the court, at any time within two (2) years from the date of such settlement, to reconsider and adjust the same.

SEC. 204. Before any such settlement shall be re-examined, it shall be the duty of the court to give such officer ten (10) days' notice of the time and place where such settlement will be adjusted.

## PENALTIES.

SEC. 205. If any county treasurer, collector or sheriff loans any money belonging to the State or county, with or without interest, or uses the same for his own purposes, he shall forfeit and pay for every such offense a sum not to exceed one thousand dollars ($1,000) nor less than five hundred dollars ($500), to be recovered in civil action at the suit of the State, for the use of the State, county, city, town or body politic.

SEC. 206. Every clerk of the County Court, assessor or collector, who shall in any case refuse or knowingly neglect to perform any duty enjoined on him by this act, or who shall consent to or connive at any evasion of its provisions, whereby any proceedings herein required shall be prevented or hindered, or where any property required to be listed for taxation or for the collection of taxes thereon, or the valuation thereof be entered on the tax books or list at less than the true value, shall for every such neglect, refusal, connivance or consent, forfeit and pay to the State not less than one hundred ($100) nor more than five thousand dollars ($5,000), at the discretion of the court, to be recovered by an action in the name of the State before the Circuit Court of the proper county.

## OFFICIAL DISTRIBUTION OF TAXES.

SEC. 207. All taxes collected and arising under the provisions of any law of this State from taxation, shall be distributed by the Auditor of State, if in possession of State authority, or if in possession of county authority, by the clerk of the County Court, to the several funds to which they belong.

SEC. 208. The Auditor of the State is hereby denied authority to draw any warrant on the treasurer to be paid out of the general revenue of the State for the support of common schools, and any act or part of act appropriating any of the general revenue of the State for common schools is repealed.

REFUNDING TAXES ERRONEOUSLY ASSESSED AND PAID.

SEC. 209. In case any person has paid, or may hereafter pay, taxes on any property, real or personal, erroneously assessed, upon satisfactory proof being adduced to the County Court of the fact, the said court shall make an order refunding to such person the amount of the county tax so erroneously assessed and paid, and upon production of a certified copy of such order to the auditor, he shall draw his warrant on the State Treasurer for the amount of State tax erroneously assessed and paid. Such warrant shall be paid out of the appropriation to pay moneys arising from the erroneous assessment and collection of taxes. But in case there shall be no appropriation, or the appropriation shall have been exhausted, then the auditor shall issue a certificate of indebtedness therefor.

SEC. 210. If the taxes charged on any land or lot, or part thereof, be regularly paid, and such land erroneously returned delinquent and sold for taxes, the sale thereof shall be void, and the money paid by the purchaser at such void sale shall be refunded to him by the officer having the same in charge, on the order of the County Court that such land was erroneously returned delinquent and sold for taxes.

SEC. 211. Whenever an action has been or may hereafter be brought against any person holding the office of county collector, county assessor or clerk of the County Court for performing or attempting to perform any duty or thing authorized by any of the provisions of this Act, or the laws of this State, for the collection of the public revenues, such collector, assessor or clerk shall be allowed and paid out of the county treasury reasonable fees of counsel and other expenses for defending such action or suit, and the amount of any damages or costs adjudged against him, which said fees, expenses, damages and costs shall be apportioned ratably by the clerk of the County Court among all the parties entitled to share the taxes so collected, and by the said clerk shall be deducted from the shares or portions of revenue at any time payable to each, including as one of said parties the State itself, as well as the counties, townships, towns or cities, and other corporations or other organizations entitled thereto as aforesaid.

FINES, PENALTIES AND FORFEITURES GO TO THE COUNTIES — COLLECTION OF.

SEC. 212. All fines, penalties and forfeitures imposed by any court or board of officers whatsoever, shall be paid into the county treasury for county purposes: *Provided*, that all fines and penalties

of city courts and courts of incorporated towns, for violating city or town ordinances, not defined as offences against the State, may be retained by the city and town for the maintenance of the courts of such city or town.

SEC. 213. All Justices of the Peace are prohibited from collecting fines, penalties and forfeitures, but that duty shall devolve upon sheriffs and constables exclusively.

SEC. 214. Justices of the Peace, city judges, police judges, recorders and all other municipal, township or county officers shall, semi-annually, on or before the first (1st) day of the Circuit Court, at each term thereof, file in the office of the clerk of the Circuit Court of their respective counties, an official transcript of all fines, penalties and forfeitures adjudged by them against defendants in the courts, giving the style of the case, the full name of the parties and the amount of the judgment, if any, in each case, and the name of the officer collecting the same.

SEC. 215. All constables, city marshals or other collecting officers of any city, township or other public corporations, shall, quarterly, on the first (1st) Monday in July, October, January and April, turn over to the county treasurer of their respective counties, all fines, penalties and forfeitures, less the commission due such officers, which shall be three (3) per cent. for constables on the amount collected by them, taking duplicate receipts therefor, one of which shall be immediately filed with the clerk of the County Court of their respective counties: *Provided*, that this shall not require the city marshal to turn over such moneys as may be collected for violation of city or town ordinances.

SEC. 216. On or before the first (1st) Monday of July, October, January and April of each year, the clerks of the County Courts shall audit the accounts of constables and other collecting officers referred to in the preceding section; to this end the said clerks of the County Courts shall open a separate account with each of the said officers in a book to be kept by said clerks for that purpose. They shall charge said collecting officer with the amount of fines, penalties and forfeitures adjudged against defendants in justices, city, police or other courts in the county, excepting only Circuit Courts, as shown by the transcript of said judicial officers on file in the offices of the clerks of the County Courts.

SEC. 217. Said constables and other collecting officers shall not be credited with any deficits as to fines and penalties unless they shall be able to show the death of the party against whom the fine or penalty was adjudged, or that imprisonment in default of the payment of fine has been complied with in accordance with the provisions of the criminal law. The constables and other collecting officers shall not be credited with any deficit on forfeited bail bonds or recognizances unless the return of the officer serving the execution in said case shall show that the defendant had no property subject to execution, and in such case a certified copy of such return shall be filed with the clerk of the County Court by the officer charged with said collection.

SEC. 218. The clerk of the County Court shall at the commencement of each session of the Circuit Court of his county, furnish the prosecuting attorney with a written statement of all deficits of constables and other collecting officers on account of fines, penalties and forfeitures. It shall be the duty of the prosecuting attorney to bring suit against said constables and collecting officers and their securities for the deficiency due, and also to prosecute said officers by indictment for malfeasance in office.

SEC. 219. At the close of the term of each Circuit Court the clerk of said court shall furnish to the clerk of the County Court an official abstract of all fines, penalties and forfeitures adjudged against defendants during said term of the Circuit Court or courts, giving in said abstract the style of each case, the full name of the parties and amount of each fine, penalty and forfeiture separately.

SEC. 220. The sheriffs of counties, and they only, are authorized to collect fines, penalties and forfeitures adjudged against defendants in Circuit Courts of the State, and said sheriffs shall at the time of their quarterly settlements with the County Court, turn over to the county treasurer all moneys received by them.

SEC. 221. The clerks of the County Courts shall further charge the county treasurer with all fines, penalties and forfeitures turned over by constables and other collecting officers in pursuance of the provisions of this Act.

SEC. 222. The clerk of the County Court shall further charge the sheriff with all fines, penalties and forfeitures adjudged in the Circuit Courts. The sheriff shall not be credited with any deficit on fines or penalties imposed in the Circuit Courts unless he shall be able to show the death of the party against whom the fine or penalty was adjudged, or imprisonment in default of fine, as provided by law in such cases.

SEC. 223. The sheriff shall not be credited with any deficit on forfeited bail bond or on recognizances, unless the return of the officer charged with the execution of said judgment shall show that the defendant had no property subject to execution, in which case a certified copy of such return shall be filed with the clerk of the County Court by the sheriff.

SEC. 224. A violation of any provision, or failure to comply with any of the requirements of this Act, by any of the officers herein enumerated, shall be malfeasance in office, and upon conviction thereof said officer shall pay a fine of not more than five hundred dollars ($500), and be removed from office.

SEC. 225. If the settlement of the county collectors or sheriffs, with the clerks of any County Court shows any other deficit than that authorized by the provisions of this act, it shall be the duty of the County Court to immediately notify the prosecuting attorney for the county in which said collector or sheriff resides of that fact, upon which notice it shall be the duty of the prosecuting attorney to immediately bring suit against said county collector or sheriff and his securities for the amount of such deficiency, and also to

prosecute said county collector or sheriff by indictment for malfeasance in office.

SEC. 226. This Act shall take effect from and after its passage, and all laws inconsistent or in conflict with this Act are hereby repealed: *Provided*, that for the assessment of property for taxation for the year eighteen hundred and eighty-three (1883), the time of doing and performing all acts and things whatsoever requisite and necessary to a good and valid assessment, shall be and the same is hereby extended and fixed at two months later than the dates and times fixed in this Act, except that the provisions of sections twenty-five (25), sixty-five (65), and sixty-nine (69), and from eighty (80) to eighty-four (84) inclusive, shall be extended only fifteen (15) days; and the provisions of section sixty-two (62) shall be extended two (2) months and fifteen (15) days, anything in this Act to the contrary notwithstanding: *Provided, further*, that the levying of taxes by the County Court, the making out of the tax books, the collection of taxes and settlements by the collectors, shall be at the times prescribed in this Act: and, *provided, further*, that after the return of the list of delinquent taxes on lands and town and city lots for the year 1882, the said lands and town lots shall be advertised and sold under the provisions of this Act, except that the time of advertising the same for sale, and the day of sale, and the time of settlement by the collector shall be two months later than the times fixed and provided in this Act.

Approved March 31st, 1883.